

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

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.542/Kol/2019

(निर्धारणवर्ष / Assessment Year: 2009-10)

Debdarshan Vinimay Pvt. Ltd. C/o, A.K. Jain, 15B, Clibe Row (Dr. Rajendra Prasad Sarani), Kolkata-700001	Vs.	ITO, Ward-6(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCD 9345 E		
(Appellant)	..	(Respondent)

Appellant by : Shri Manish Tiwari, FCA
Respondent by : Shri Jayanta Khanra, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 20/12/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

आदेश / ORDER

Per Dr. A.L. Saini, AM:

The captioned appeal filed by the assessee , pertaining to assessment year 2009-10, is directed against the order passed by the Commissioner of Income Tax (Appeal)-9, Kolkata in appeal no. 10/CIT(A)-9/Wd-6(1)/2017-18/Kol, which in turn arises out of assessment order passed by the Assessing Officer u/s 144 r.w. 263 r.w. 147 r.w. 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 10/03/2015.

2. At the outset itself, the Id. Counsel for the assessee submitted that the notice for hearing was not served on the assessee during the assessment stage. The assessee informed the Assessing Officer about the change of address by letter dated 26.02.2015 however, the Assessing Officer did not send the notices on changed

address therefore notices were not served on the assessee and as a result the assessee could not respond the queries raised by Assessing Officer during the assessment stage. This fact is clearly evident by the assessment order; vide para 9 of the assessment order which is reproduced below for ready reference:

“9. The assessee filed a letter dated on 26/02/2015 for change in address to 11, Clive Row. This also showed that intention of the assessee. This play could not work reasons detailed in the Paragraph 5.”

3. 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 the assessee could not plead his case before Assessing Officer due to non-service of notice on him. Therefore, during the assessment stage, the assessee could not get opportunity to explain its case, therefore, we think it fit and appropriate to remit this issue back to the file of Assessing Officer. For that we rely on the judgment of Hon’ble Apex Court in the case of Tin Box Co. vs. CIT reported in (2001) 249 ITR 216 (SC) wherein it was held as under:

“That the assessee could have placed evidence before the first appellate authority or before the Tribunal was 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.

Therefore, the Tribunal was not justified in not setting aside the assessment order in spite of a finding arrived at by it that the ITO had not given a proper opportunity of hearing to the assessee.

Accordingly, the appeals were allowed. The order under challenge was set aside. The assessment orders, that of the Commissioner (Appeals) and of the Tribunal, were also set aside. The matter shall be remanded to the assessing authority for fresh consideration.

ORDER

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 straightway agree with the assessee’s submission that the ITO 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.

2. 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.

3. The appeals are allowed. The order under challenge is set aside. The assessment orders, 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. No order as to costs."

Considering the above, we are of the view that one more opportunity should be given to the assessee to plead his case before Assessing Officer. Therefore, we set aside the order of the Id. CIT(A) and remit this issue back to the file of the Assessing Officer for de novo adjudication. Thus, the appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the Court on 31.12.2019

Sd/-

(A.T. VARKEY)

न्यायिकसदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 31/12/2019

(SB, Sr.PS)

Sd/-

(A.L.SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

Copy of the order forwarded to:

1. Debdarshan Vinimay Pvt. Ltd.
2. ITO, Ward-6(1), 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