

**IN THE INCOME TAX APPELLATE TRIBUNAL “B”, BENCH KOLKATA**  
**BEFORE SHRI S. S. GODARA, JM & DR. A.L. SAINI, AM**

**ITA No.1487/Kol/2018**  
(Assessment Year: 2012-13)

<b>M/s Kirti Vanijya Pvt. Ltd.</b> 36, Maharshi Devendra Road, Akash Ganga Building, 3 <sup>rd</sup> Floor, RN-314, Kol-7.	Vs.	<b>DCIT, Circle-7(1), Kolkata</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCK5329H</b>		
<b>(अपीलार्थी /Appellant )</b>	..	<b>(प्रत्यर्थी / Respondent)</b>

Appellant by : Shri Miraj D. Shah, AR  
Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 11/11/2019  
घोषणा की तारीख/Date of Pronouncement : 22/01/2020

**आदेश / O R D E R**

**Per Dr. A. L. Saini, AM:**

The captioned appeal filed by the assessee, pertaining to Assessment Year 2012-13 is directed against the order passed by Commissioner of Income Tax-3, Kolkata, in Appeal No.1036/CIT(A)-3/C-7(1)/15-16/Kol, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 31.03.2015.

2. At the outset itself, Ld Counsel for the assessee submitted that assessee company could not make compliance of summon u/s 131 of the Act, as the assessee`s company`s office was shifted to Chennai City and principal officer of the assessee company also shifted to Chennai City. To substantiate this, the ld Counsel took us through the relevant para of the assessment order which reads as follows:

*“Further a summon u/s 131 of the Act, was issued to the principal officer of Kirti Vanijya Private Limited on 10.03.2015 asking him to produce all of his above share allottee before this undersigned. In reply to the summon, the Director of M/s Kirti Vanijya private limited written reply on 20.03.2015 as below:*

*“But I am not personally able to attend your office because I live in Chennai and I could not arrange to come to Kolkata on such a short notice due to some family issues”.*

*Also the share capital investors in the shares of Kirti Vanijya Private Ltd could huge premium of Rs.240/-”-*

The Id Counsel therefore prayed the Bench that if an opportunity is given, the assessee company is ready to make compliance of summons u/s 131 of the Act, hence he prayed the Bench that the matter may be remitted back to the file of the assessing officer for fresh adjudication. Learned DR for the Revenue did not have any objection if the matter is remitted back to the file of the AO.

3. We have heard both the parties and perused the materials available on record, we note that the A.O had observed that the premium on shares was unreasonable and unbelievably high. For further verification, the Ld. Assessing Officer issued summon u/s 131 to the director of the assessee company for producing the principal officers and directors of the investor companies for verifying the identity, genuineness and creditworthiness of the investors. In response to the notice, the director failed to appear personally. The Director of the assessee company mentioned in his reply that he lives in Chennai and in such short period it will not be possible for him to appear personally or to produce any directors of investors company.

However, we note that while completing the assessment proceedings, the Ld. Assessing Officer cited certain case laws and added the entire share capital including premium to the tune of Rs 1,65,00,000/- to the total income of the assessee by treating the same as unexplained cash credit u/s 68 of the Act on the ground that the director of the assessee failed to appear and produce the principal officers and directors of investor companies and therefore the share capital money remained unexplained.

Before us, Id Counsel prayed that if an opportunity is given to the assessee, the assessee is ready to make compliance. We note that since, it is a reasonable cause, which prevented the assessee not to make compliance of notices under section 131/ 133(6) of the Act, therefore, we are of the view that assessee did not get proper opportunity to represent its case at the assessment stage.

Therefore, we note that the main grievance of the assessee is that no proper opportunity was given to the assessee to discharge the onus casted upon it as required in section 68 matters. So, we find force in the submission of the Ld. Counsel and therefore, the issue may be remitted back to the file of the assessing officer for fresh assessment. For that we rely on the judgment 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 follows:

*“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.*”

In view of the above facts and in the light of the Hon'ble Supreme Court's decision in Tin Box Company (supra), we remand the matter back to the file of Assessing Officer for de novo assessment and to decide the matter in accordance to law after giving opportunity of being heard to the assessee.

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

Order pronounced in the open court on this 22/01/2020.

**Sd/-**  
**(S. S. Godara)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:22/01/2020

RS, Sr.PS

**Sd/-**  
**(A. L. Saini)**

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Assessee – M/s Kirti Vanijya Pvt. Ltd.
2. प्रत्यर्थी / The Respondent.- DCIT, Circle-7(1), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.