

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
(Virtual Court)

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member]

I.T.A. No. 1900/Kol/2019
Assessment Year: 2011-12

M/s. Trishna Distributors Pvt. Ltd. C/o. Agarwal Vishwanath & Associates, 133/1/1A, S.N. Banerjee Road, Pushkal Bhawan, 3 rd Floor, Kolkata-700 013.	Vs.	Income-tax Officer Ward-1(3), Kolkata.
(PAN: AADCT 1086 F)		
Appellant		Respondent

For the Appellant	Shri Ankit Jalan, Adv.
For the Respondent	Shri Imokaba Jamir, CIT

Date of Hearing	21.07.2020
Date of Pronouncement	11 .08.2020

ORDER

Per Shri Aby T. Varkey, JM:

This is an appeal preferred by the assessee against the Order of the CIT(A)-12, Kolkata dated 26.12.2018 for assessment year 2011-12.

2. The Ld. AR drew our attention to the first ground of the appeal and submitted that the CIT(A) has passed an *ex-parte* order without going into the merits of the case. The assessee while filing this appeal has stated the reason for non-appearance before the Ld. CIT(A). It is noted from the caption of the impugned order that the Ld. CIT(A) had fixed three dates for hearing. Initially the case was fixed for hearing on 24.09.2018. None appeared before the Ld. CIT(A) on behalf of the assessee. The Ld. CIT(A) acknowledges that on 25.09.2018 he received a request letter for adjournment from the AR of the assessee and thereafter the case was adjourned to 10.10.2018. According to him, the matter was again fixed for hearing on 20.12.2018 and since neither anyone

appeared and nor filed any written submission and further, taking note that the notice was returned back through Postal Department with the remark "DC", the Ld. CIT(A) having perused the statement of facts filed by the assessee concluded that there was no mistake in the order passed by the AO and therefore he confirmed it.

3. The Ld. AR drew our attention to the fact that the assessment order has been framed by AO u/s 144 of the Income Tax Act, 1961 (hereinafter 'the Act') after re-opening u/s 147 of the Act. The Ld. AR has filed an affidavit of Shri Rabi Kumar Gupta, Director of assessee Company. The affidavit we note has been affirmed and attested by Notary Public. The reason for non-appearance has been stated as under:

"That the Ld. Income Tax Officer, Ward - 1(3), Kolkata (hereinafter referred to as Ld. A.O.) has provided two effective dates of hearing before passing the assessment order dated 25.08.2017 u/s 144 of the Income Tax Act 1961, making an addition of Rs. 16,97,80,000/- and thereby raising a demand of Rs 9,52,38,220/-.

That both the notices issued by the Ld. A.O. was not received by the appellant company due to postal difficulty and therefore, could not be complied with.

That the Ld. A.O. had made addition of practically all amounts credited in the bank account of the appellant company which is very much illogical, unjustified, perverse, arbitrary and beyond the minimum norms of natural justice to the appellant company.

That aggrieved of the said assessment order u/s 144 passed by the Ld. A.O. the appellant company had filed an appeal before the Ld. CIT (Appeals).

That thereafter the Ld. CIT (Appeals)-12 had passed an order dismissing the appeal on 26.12.2018 without giving proper and meaningful opportunity of being heard to the appellant company.

That on the fixed date of hearing on 24.09.2018 the A/R had sought adjournment, which was accepted and refixed on 10.10.2018. On 10.10.2018, the A/R attended but due to some official work could not find the Ld. CIT(Appeals) in his office and was informed that a fresh notice of hearing would be served.

That the fact is that the appellant company had not received the fresh notice of hearing fixing the date on 20.12.2018 sent by the Ld. CIT (Appeals) by post due to some postal irregularity."

4. According to the Ld. AR since the assessee company did not receive any notice about the dates of hearing fixed by the AO, so the Ld. AR could not attend the proceedings before the AO. Therefore, the AO has passed the Best judgment assessment u/s 144 of the Act. The AR submits that no proper opportunity the assessee got at the assessment stage. The Ld. AR also drew our attention to the undertaking of the director given in the affidavit which reads as under:

“That I being the Director of M/s. Trishna Distributors Pvt. Ltd. hereby give an undertaking before the Hon’ble ITAT on behalf of the appellant company, that if the matter is set aside before the Ld. A.O. by the Hon’ble ITAT/Kolkata, for passing of fresh assessment order after providing reasonable opportunity of being heard, we shall duly appear before the Ld. A.O., for fresh proceedings and make proper compliances to all statutory notices duly sent by post to the proper address of the appellant company or via email to the appellant company by the Ld. A.O.”

5. By relying on the decision of the Hon’ble Supreme Court in the case of *Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC)* the Ld. AR contended that the issue needs to be remanded back to AO for fresh/ *de novo* assessment. We note that in the case of *Tin Box* (supra) the Hon’ble Supreme Court 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.”

6. We note from the contents of the affidavit filed by the assessee Company that it did not get the notices of hearing and therefore could not attend before the Ld. AO/CIT(A). However, we note that the AO gave only two effective dates of hearing as discerned from its affidavit. So we are of the opinion that assessee did not get proper opportunity before the AO. Respectfully, taking note of the aforesaid decision of Hon’ble Supreme Court and the fact that the assessee did not receive proper opportunity before the AO at the assessment stage, we are inclined to set aside the Order of

the CIT(A) and remand the matter back to the file of AO for *de novo* adjudication. The AO is directed to pass the *de novo* assessment after hearing the assessee in accordance with law.

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

Order is pronounced in the open court on 11 August, 2020.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Sd/

[Aby T. Varkey]
Judicial Member

Dated: 11 August, 2020.

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Appellant**- M/s. Trishna Distributors Pvt. Ltd., C/o. Agarwal Vishwanath & Associates, 133/1/1A, S.N. Banerjee Road, Pushkal Bhawan, 3rd Floor, Kolkata-700 013.
2. **Respondent**- Income-tax Officer, Ward-1(3), Kolkata.
3. CIT(A)-12, Kolkata. (Sent through e-mail).
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (Sent through e-mail).

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches