

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM and Dr. ArjunLalSaini, AM]

ITA No. 346/Kol/2020
Assessment Year: 2013-14

M/s. Eternal Exim Pvt. Ltd PAN: AABCE 9575E	Vs.	Income Tax Officer Ward 11(2), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	19.08.2020
Date of Pronouncement	09 .09.2020
For the Appellant	Shri Miraj D. Shah, Ld.AR
For the Respondent	ShriRam Bilas Meena, CIT/Ld.DR

ORDER

Shri A. T. Varkey, JM

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-4, Kolkata dated 19-03-2019 for the assessment year 2013-14.

2. The main grievance of the assessee is that the Ld. CIT(A) has dismissed the appeal ex-parte without giving proper opportunity of hearing to the assessee and the assessee has raised ground no. 1, highlighting this grievance which reads as under:-

01. For that the learned CIT (Appeals) erred in dismissing the appeal on merits without giving proper opportunity of hearing to the assessee. Thus order of the CIT(Appeals) be reversed.

3. According to the Ld. AR, the assessee has also raised ground no. 2, wherein he pointed out that the assessment order was passed by the AO under section 144 of the Income-tax Act, 1961 (in short, hereinafter referred to as the ‘Act’) because assessee did not participate before him, since it did not receive any notice of hearing from AO. According to the Ld. AR, due to postal problem in the locality where the assessee is located, the assessee faced the problem of not receiving the notice and, therefore, the assessee company itself has later changed its location, which is evident from perusal of Form No. 36, wherein address of assessee has now been changed as under:-

Room No. 301, Premises no. 4,
Third Floor, Saklat place police station,
Bow Bazar, Kolkata-700 072.

4. And we note that the address given in the impugned order of the Ld. CIT(A) as well in the assessment order is as under:-

ETERNAL EXIM PRIVATE LIMITED
28 Debendra Chandra Dey Road,
C.R Avenue, Kolkata-700 015.

5. According to the Ld. AR since the assessee did not get copy of notices from either the Ld. CIT(A) or the AO, the assessee could not appear before them, which resulted in the AO passing Best Judgment Assessment order u/s. 144 of the Act and the Ld. CIT(A) also dismissing the appeal for non- participation in the first Appellate proceedings. In support of the aforesaid facts the Ld. AR has undertaken to file affidavit of the director of the assessee company.

6. Per contra, the Learned CIT/DR (in short, the Ld. DR) opposed the plea of the assessee and contended that the Ld. AR must have furnished its email id in Form No. 35 and so, even if there was any postal trouble at its location, it must have received the notice in its email id. And, therefore, according to the Ld. CIT/DR the plea of the assessee that it did not receive the notice even during the appellate proceedings cannot be accepted. In his rejoinder, the Ld. AR drew our attention to Form No. 35 filed by the assessee before the Ld. CIT(A), wherein the assessee has not given its email id. Therefore, the Ld. AR contended that the question of Ld. CIT(A) informing assessee in its email id the date of hearing does not arise. Therefore, according to the Ld. AR that the impugned order of the Ld. CIT(A) was passed without hearing the assessee and since the AO's order was also passed u/s. 144 of the Act, the matter may be remitted back to the AO for fresh assessment. For that he relied on the decision of the Hon'ble Supreme court [three Bench] decision in Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC) wherein the Hon'ble Supreme Court held that if the assessee did not get proper opportunity before the AO, the matter should be restored to the AO for fresh consideration since assessment should be framed by the AO. The Ld. AR

undertakes before us to appear before the AO diligently and to furnish all the requisite documents in support of its claim.

7. Having heard both the parties and after perusal of records, we note that the AO passed the assessment order u/s. 144 of the Act and made addition of Rs. 6.70 crores. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A). According to the Ld. AR, since notice of hearing could not be served upon the assessee, it could not participate in the assessment proceedings as well as in the first appellate proceeding, which fact has been sworn by the assessee in the affidavit. On appeal, the Ld. CIT(A) taking note that the assessee did not turn up before him, he dismissed the appeal for non-prosecution/non-participation before him. The Ld. AR has drawn our attention to the fact that there is change in address of assessee, which is evident from Form No. 36 (supra). From the aforesaid facts discussed we are of the opinion that there was no proper opportunity given to the assessee by the AO at the time of assessment, since assessee did not receive the notice of hearing. So relying on the decision of Hon'ble Supreme Court in Tin Box Company (supra) wherein it was held as under:

"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."(emphasis given by us)

8. Since we note that the assessee did not get proper opportunity during the assessment for non-receipt of notice, we rely on the said decision of the Hon'ble Supreme Court in Tin Box Company (supra), are inclined to set aside the order of the Ld. CIT(A) and remand to AO for fresh assessment after affording reasonable opportunity of hearing to the assessee. Liberty is given to the assessee to file documents to substantiate its claim and file written submission if advised to do so. The assessee is directed to be diligent during the hearing before the AO.

9. In the result, the appeal of revenue is allowed for statistical purpose.

Order is pronounced in the open court on 09 Sept. 2020

Sd/-
(Arjun Lal Saini)
Accountant Member

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

Dated : 09 Sept. 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –M/s. Eternal Exim Pvt. Ltd Room No. 301, Premises no. 4, Third Floor, Saklat P.S, Bow Bazar-700 072.
2. Respondent – Income Tax Officer, Ward 11(2), AaykarBhawan, P-7 Chowringhee Square, Kolkata-69.
3. CIT(A)-, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar