आयकर अपीलीय अधीकरण, न्यायपीठ – "C" कोलकाता,

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

[Before Shri P. M. Jagtap, Vice-President and Shri A. T. Varkey, JM]

I.T.A. No. 458/Kol/2020
Assessment Year: 2014-15

M/s Ashtavinayak Tradecom Pvt. Ltd. (PAN: AAHCA 9347 G)	Vs.	ITO, Ward-9(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	01.10.2020
Date of Pronouncement	07. 10.2020
For the Appellant	Shri Bisweswar Ghosh, A.R
For the Respondent	Shri Jayanta Khanra, D.R.

ORDER

Per Shri A.T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-15, Kolkata dated 28.03.2019 for A.Y. 2014-15.

2. At the outset the Ld. Counsel for the assessee pointed out that the ld. CIT(A) has passed an ex-parte order without going into the merits of the case. He also pointed out that even the Assessing Officer has passed the assessment order under 144 of the Income Tax Act, 1961 (in short the Act) without giving proper opportunity to the assessee. In order to buttress the plea of lack of proper opportunity before the Assessing Officer, before us the assessee has filed an Affidavit which has been duly notarized dated 24.06.2020. From a perusal of the contents of the Affidavit, we note that the assessee did not get proper opportunity before the Assessing Officer, so we are inclined to set aside the impugned order and remit the matter back to the file of the Assessing Officer for passing fresh assessment. The Ld. A.R has undertaken to appear

diligently before the Assessing Officer with all documents to substantiate its claim or file written submission and documents to substantiate its claim before the Assessing Officer . For remanding for fresh assessment back to the file of the Assessing Officer in the above said circumstances, we rely on the decision of Hon'ble Supreme Court in the case of Tin Box Co. vs. CIT in (2001) 116 TAXMAN 491 (SC) which reads as under:

> ***"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 aforestated. No order as to costs."*

Respectfully following the aforesaid decision of Hon'ble Supreme Court in the case of Tin Box Co. (supra) we set aside the order of the ld. CIT(A) and remit the matter back to the file of Assessing Officer for fresh assessment and the assessee is directed to diligently appear through its Directors/ A.R / or file written submission and documents before the Assessing Officer for substantiating its claim and the Assessing Officer to frame fresh assessment after hearing the assessee in accordance to law.

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

Order is pronounced in the open court on 07.10.2020.

Sd/-	Sd/-
(P. M. Jagtap) Vice President	(A. T. Varkey) Judicial Member

Dated: 07.10.2020

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Ashtavinayak Tradecom Pvt. Ltd., 5/5/, Suhatta Mall, 5th Floor, City Centre, Durgapur, Bardhaman-713216.
2. Respondent- ITO, Ward-9(1), Kolkata
3. The CIT(A)-15, Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata