

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

**I.T.A. No. 989/Kol/2018**  
**Assessment Year: 2011-12**

Smt. Aparna Biswas (PAN: AFRPB 4221 Q)	Vs.	ITO, Ward-49(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	21.01.2021
Date of Pronouncement	27.01.2021
For the Appellant	Shri Sunil Surana, FCA
For the Respondent	Shri Dhrubajyoti Roy, JCIT

**ORDER**

**Per Shri A. T. Varkey, JM:**

This appeal preferred by the assessee is against the order of Ld. CIT(A)-15, Kolkata dated 03.01.2018 for Assessment year 2011-12.

2. At the outset it has been brought to our notice by the Ld. A.R of the assessee Shri Sunil Surana, FCA that the impugned order of the Ld. CIT(A) is an ex-parte order. Further, according to Ld. A.R, during the assessment proceeding, though the AO has acknowledged that the assessee had produced the books of account, cash books, ledgers etc which he summoned for, still he has made six (6) petty additions merely because the assessee's A.R could not submit explanation/reconcile certain mismatches pointed out by the AO. According to Ld. A.R, the assessee did not get proper opportunity before the AO to reconcile the points / issues brought to her notice. Therefore the Ld AR relying upon the decision of Hon'ble Supreme Court in the case of Tin Box Co. vs. CIT in (2001) 116 TAXMAN 491 (SC) pleaded that matter may be restored back to the file of AO. Per contra the Ld. D.R Shri Dhrubajyoti Roy was of the opinion that enough opportunity was given to the assessee and since she failed to reconcile the mis-matches pointed out by the AO he added the same, so therefore second opportunity should not be given to the assessee.

3. Having heard both the parties and after perusal of the records, we note that the assessee during assessment proceeding has produced the books of account, cash book, ledger etc. which fact has been acknowledged by the AO. Further, it is noted that the books of assessee has not been rejected by the AO. However, certain additions (six additions) were made to the tune of Rs. 8,10,857/- for want of explanation/reconciliation. According to assessee, for filing the reconciliation she did not get proper opportunity; and in order to verify this fact we have perused the assessment order and could not get any assistance since AO has stated about only sending two notices on 31.07.2012 & 15.07.2013. Thereafter the AO says only about collecting certain information u/s 133(6) of the Act dated 25.11.2013. Thereafter we note that AO only says about the inability of the Ld. A.R of assessee to satisfy him about certain discrepancies. So he made the addition. In such a scenario, we are of the view that since the additions were made because assessee/Ld. A.R could not give proper explanation/reconciliation about certain transactions, for the interest of justice an opportunity may be given to the assessee. In any case assessee's grievance is that she did not get proper opportunity to explain/reconcile in such a situation we remand the issues back to AO for fresh assessment in accordance to law for that we rely on decision of Hon'ble Supreme Court in the case of Tin Box Co. vs. CIT (supra) 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 aforesaid. No order as to costs."*

4. In the light of the discussion (supra) and relying on the decision of Hon'ble Supreme Court in Tin Box (supra) we set aside the impugned order and remand the matter back to AO for de-novo assessment and assessee is directed to be diligent and file explanation/reconciliation as called for by the AO and if advised to do so, file documents, written submissions etc in support of its claim before the AO and the AO to pass fresh assessment in accordance to law.

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

Order is pronounced in the open court on 27<sup>th</sup> January, 2021.

Sd/-  
(J.S. Reddy)  
Accountant Member

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

Dated: 27.01.2021

*SB, Sr. PS*

Copy of the order forwarded to:

1. Appellant- Smt. Aparna Biswas, Sainpala (Jora Pukur Dhar), Basirhat, 24 Parganas (North)-743411
2. Respondent – ITO, Ward-49(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