

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

I.T.A. No. 2319/Kol/2019
Assessment Year: 2014-15

Lambodar Vyapaar Pvt. Ltd. (PAN: AACCL0766F)	Vs.	Income-tax Officer, Wd-9(3), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	28.01.2021
Date of Pronouncement	05.02.2021
For the Appellant	Shri Manish Tiwari, AR
For the Respondent	Smt. Ranu Biswas, Addl. CIT

ORDER

Per Shri A. T. Varkey, JM:

This appeal preferred by the assessee is against the order of Ld. CIT(A)-15, Kolkata dated 25.02.2019 for AY 2014-15.

2. At the outset itself, the Ld. Counsel for the assessee Shri Manish Tiwari pointed out that this is a case wherein the Ld. CIT(A) has passed an ex parte order without giving proper opportunity to the assessee. According to the ld. AR, the notice fixing the date of hearing was not received by the assessee so, the Ld. AR could not attend the hearing because there was no instruction from the assessee to appear for hearing. It was pointed out by the Ld. AR it came to his knowledge that the Ld. CIT(A) after fixing the hearing on 24.12.2018, 23.01.2019 and 22.02.2019 (three hearings) had hastily passed the impugned order on 25.02.2019 without service of notice. Moreover, it was brought to our notice that the AO also has saddled the entire addition after acknowledging that in compliance of his notices, Sri Dipak Tibriwal, A/R of the assessee appeared and submitted details called for. However, in the assessment order the AO notes that the assessee company has raised share

capital of Rs.5,15,750/- along with huge securities premium from fourteen (14) subscribers and according to him, letters had been issued to the subscribers for the purpose of verification of source of their investment u/s. 133(6) of the Income-tax Act, 1961 (hereinafter referred to as the Act). However, according to him, out of the fourteen (14) subscribers eight (8) notices were returned by postal authority with remarks 'not known'. According to AO, the six (6) subscribers to whom the notices were served neither replied nor the rest could be served the notices. So, the AO made the entire addition of share capital and the share premium. According to Ld. AR, all the share subscribers in fact replied to the notices which were received by the AO day after he passed the assessment order i.e. on 22.12.2016 . According to Ld. AR, the notices u/s. 133(6) of the Act was issued at the fag end and by the time they all replied to the AO, the AO had hastily completed the assessment even though there was time upto 31.12.2016 and there was no need to AO to frame assessment on 21.12.2016 and when the fact was that all replies from share subscribers reached AO on 22/23 December, 2016. So, according to Ld. AR, there is per-se violation of natural justice and pleaded that since the assessee did not get proper opportunity before the AO, the matter may be restored back to AO for fresh assessment. The Ld. DR on the other hand, supported the order of AO and submitted that second opportunity should not be given to assessee before the AO.

3. Having heard both sides, we note that he Ld. CIT(A) has passed an ex parte order after fixing the appeal on three occasions. However, the assessee's case is that it did not receive the notice of hearing. It is noted that the Ld. CIT(A) has not said anything regarding service of notice/mode of service, whether it was served or it has returned etc. So, the impugned order of Ld. CIT(A) is bad since Ld. CIT(A) is duty bound to decide the appeal in accordance to section 250(6) of the Act. So, we do not countenance the action of Ld. CIT(A) to have dismissed the appeal ex parte and not on merits, which according to us is per-se in violation of natural justice and without giving proper opportunity of hearing to the assessee. Further, taking note of the aforesaid facts narrated by Ld AR before the AO during assessment proceedings, it was pointed out by the Ld. AR that the AO did not give sufficient time for the share subscribers to respond to the notices sent u/s. 133(6) of the Act

and even though there was enough time i.e, more than 10 (ten) days to complete the assessment, the AO instead has passed the order hurriedly on 21.12.2015; and the fact according to Ld AR was that compliance were made from the part of the share subscribers directly to the AO on 22/23rd December, 2016. Therefore, according to the Ld. AR, proper opportunity was not granted to the assessee and the assessee was not put to notice about the non-compliance on the part of certain share subscribers, therefore, relying on the decision of the Hon'ble Supreme Court in Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC), he prayed that the matter may be remanded back to the AO. We note that the AO has acknowledged to have served notices on six (6) share subscribers out of eleven (11) and the assessee was not put to notice regarding the non-service of notice to eight (8) parties. However, it has been brought to our notice that all the share subscribers had in fact replied with all the details and supporting documents to the assessee pursuant to sec. 133(6) notice. However, the replies from share subscribers were late by one (1) day (before the assessment was framed on 21.12.2016). Therefore, we find that in this case the assessee did not get proper opportunity before the AO, therefore, we relying on the decision of Hon'ble Supreme Court in the case of Tin Box Company (supra) wherein the Hon'ble Supreme Court has 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)

5. So, relying on the aforesaid decision of the Hon'ble Supreme Court since the assessee did not get proper opportunity before the AO, we set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO for de novo assessment in accordance to law. Needless to say, assessee should be given proper opportunity of being heard and the assessee is directed to be diligent and is at liberty to file/produce documents before the AO during the assessment proceedings ; and if advised to file written submissions before the AO.

6. In the result, the appeal of assessee is allowed for statistical purpose.

Order is pronounced in the open court on 5th February, 2021.

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

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

Dated: 05.02.2021

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant- Lambodar Vyapaar Pvt. Ltd., 8, amartalla Street, 4th floor, Kolkata-700 001.
2. Respondent – ITO, Ward-9(3), 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