

आयकर अपीलिय 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. 476/Kol/2020
Assessment Year: 2012-13

Piyush Traders & Credits Pvt. Ltd. (PAN: AABCP 5242 K)	Vs.	ITO, Ward-5(2), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	10.03.2021
Date of Pronouncement	15.03.2021
For the Appellant	Shri Miraj D Shah, A.R
For the Respondent	Smt. Ranu Biswas, Addl. CIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-2, Kolkata dated 23.09.2016 for Assessment year 2012-13.

2. At the outset it is noted that there is a delay of 103 days and the assessee has filed condonation application along with Affidavit citing the reasons given for condoning the delay, which we find to be reasonable. Therefore we condone the delay and proceed to hear the appeal.

3. At the outset the Ld. Counsel for the Assessee Shri Miraj D Shah drew our attention to the fact that the impugned order of Ld. CIT(A) is an ex parte order. According to Ld. A.R, it can be seen that the AO has added the entire share application money of Rs. 2,00,00,000/- only on the ground that the assessee company failed to produce the directors and principal officers of the seven (7) share subscribing companies. According to Ld. Counsel, the assessee did not get proper opportunity before the AO because the directors were out of station and therefore could not appear themselves with the books of accounts etc. as directed by the AO. However, the Ld. A.R undertakes that if an opportunity is given, then the assessee

company would be able to produce directors of all share-subscribing companies before the AO along with books as directed by him. Per contra, the Ld. D.R though expressed his displeasure against the assessee not appearing before the Ld CIT(A), however, was not averse to the matter being restored before the AO.

4. Having heard both the parties and after perusal of the records, we note that the impugned order of the Ld. CIT(A) has been passed without hearing the assessee i.e. *it is an ex-parte order*. We also note that the AO has made addition of Rs. 2,00,00,000/- because the assessee failed to produce directors of the seven (7) share subscribing companies. According to Ld. A.R, the directors were unable to attend the office of the AO because directors were out of station and since the assessment was getting time barred, the AO passed the order in 31st March, 2014; and it was brought to our notice that the directors had appeared before AO in the first week of April, 2015 itself. Be that as it may be, the Hon'ble Supreme Court in the case of Tin Box Company vs. CIT reported in (2001) 249 ITR 216 (SC) has held that proper opportunity need to be given by the AO to the assessee before framing of assessment. The Hon'ble Supreme Court in Tin Box Co. (supra) held 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 straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."

2. 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 selling 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.

3. 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 ?"

4. 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 asses-see.

5. 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 aforesaid. No order as to costs.”

In the light of the aforesaid decision of the Hon’ble Supreme Court, we are inclined to restore the issue of share application money with premium amounting to Rs. 2,00,00,000/- back to the AO for fresh adjudication on this issue. The Ld. A.R of the assessee company is directed to ensure that assessee produces the directors of seven (7) share subscribing companies along with documents as directed by the AO. Needless to say, proper opportunity should be given to the assessee to bring evidence on record to substantiate its claim and the AO to pass reasoned order.

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

Order is pronounced in the open court on 15th March, 2021.

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

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

Dated: 15.03.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Piyush Traders & Credits Pvt. Ltd. 19, Synagouge Street, Kolkata-700001.
2. Respondent – ITO, Ward-5(2), Kolkata
3. The CIT(A)- 2, 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