

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH,
“VIRTUAL HEARING” AT KOLKATA**

(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)

[Before Shri A. T. Varkey, JM]

I.T.A. No. 145/GAU/2020

Assessment Year: 2014-15

Shri Haladhar Das (PAN: CLHPD 7497 L)	Vs.	ITO, Ward-1, Silchar
Appellant		Respondent

Date of Hearing	06.10.2021
Date of Pronouncement	21.10.2021
For the Appellant	Shri Nirmal Singh Dugar, A.R
For the Respondent	Shri Subhrajyoti Bhattacharya, Addl. CIT Sr. D.R

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-Shillong dated 26.09.2019 for assessment year 2014-15.

2. The assessee has filed additional ground of appeal challenging the action of AO for non-service of notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) before completing the assessment u/s 147/144 of the Act. On this issue, it is noted that the AO had re-opened the assessment and had issued notice u/s 148 of the Act dated 05/09/2018 to the assessee which was served on 08.09.2018. However the AO notes that the assessee did not comply with the notice u/s 148 of the Act by filing the return of income, therefore he issued notice u/s 142(1) of the Act calling for certain details which was also not responded by the assessee. Therefore the AO notes that he had no other alternative but to frame assessment u/s 144 of the Act on the basis of information available on record. In such a scenario, I agree that the AO had no other alternative but to proceed with framing assessment u/s 144 of the Act since it is admitted that the assessee had not filed the return of income pursuant to the service of notice u/s 148 of the Act. Therefore, the AO rightly did not

issue notice u/s 143(2) of the Act, because there was no statutory requirement of the AO to issue the same. Ergo this legal issue raised stands dismissed.

3. Coming to the other ground of appeal of the assessee it is noted that it is against the impugned the action of the Ld. CIT(A) in confirming the addition of Rs. 17,40,000/- as long term capital gain. According to assessee this amount was sale consideration of his Shaiel Dhan Bhumi/ Shaiel Raice Land/Rural Agricultural Land which is exempted u/s 10(37)(1) read with Section 2(14) of the Act without giving proper opportunity of hearing to the assessee at the assessment stage.

4. Heard both the parties and perused the records. First of all it is not in dispute that the assessment order has been passed after reopening u/s 147 of the Act and thereafter by framing the assessment u/s 144 of the Act because according to AO the assessee did not co-operate during the assessment proceedings. And it is the assessee's case that for reasons beyond his control being not well he was prevented from responding to the notice u/s 142(1) and notice u/s 144 of the Act. So, as held by the Hon'ble Supreme Court *Tin Box Company vs. CIT* reported in (2001) 249 ITR 216 (SC) if sufficient opportunity is not given by the AO while framing of assessment, then the assessee should be given opportunity before the AO. The Hon'ble Supreme Court in *Tin Box Co. (supra)* it was 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 assessee.

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 Hon’ble Supreme Court since the AO has framed the assessment without participation from the side of the assessee for reasons as discussed (supra) and since the assessee has to explain the amount deposited in his bank account supported by the documents and the AO had to examine the veracity of the same, I deem it fit to set aside the impugned order of Ld. CIT(A) for de novo assessment on the issue of addition made by the AO. Before me the Ld. A.R. of the assessee has undertaken to produce all the documents before the AO in the assessment proceedings and file written submissions also to substantiate his claim on the issue/lis.

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

Order is pronounced in the open court on 21st October, 2021

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated: 21.10.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant – Shri Haladhar Das, S/o, Late Churamoni Das, Vill & PO Bhakatpur, Pt. VIII, Rangirkhari, Cachar, Assam-788005
2. Respondent – ITO, Ward-1, Silchar
3. CIT(A), Shillong
4. CIT-
5. DR, ITAT, Guwahati

/True Copy,

By order,

SeniorPvt. Secy./DDO/H.O.O
ITAT, Kolkata Benches, Kolkata