

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA**  
[Before Shri A. T. Varkey, JM & Shri Rajesh Kumar, AM]**I.T.A. No. 52/Kol/2020**  
Assessment Year: 2014-15

Bhagyalakshmi Tie Up Pvt. Ltd. (PAN: AAECB5809R)	Vs.	Income-tax Officer, Ward-6(1), Kolkata.
Appellant		Respondent

Date of Hearing (virtual)	03.01.2022
Date of Pronouncement	05.01.2022
For the Appellant	Shri Manish Tiwari, FCA
For the Respondent	Smt. Ranu Biswas, Addl. CIT, DR

**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 25.11.2019 for AY 2014-15.

2. At the outset, the Ld. AR of the assessee Shri Manish Tiwari stated that the Ld. CIT(A) has dismissed the appeal of the assessee only on the ground that since the appeal had to be filed as per the e-mode/e-fling and since the assessee had filed physically the appeal he has dismissed the appeal of the assessee. And further he brought to our notice that that this year was the first year when the department insisted on filing of appeal by e-mode. Therefore, according to Ld AR merely on technicality the appeal of the assessee ought not to have been dismissed. And in this regard, it has been brought to our notice that a similar issue had come before this Tribunal in Lakshmi Maity Vs. ITO in ITA No. 1517/Kol/2018 dated 19.12.2018 wherein the Tribunal was pleased to restore the appeal back to the file of the Ld. CIT(A). Further according to the Ld. AR, in the present case in hand, the AO had passed the assessment order without giving proper opportunity to the assessee and has made substantial additions. According to the Ld. AR, the Hon'ble Supreme Court in the case of Tin Box Company vs. CIT reported in (2001) 249 ITR 216 (SC) has held that if the assessee has not been given proper opportunity before the AO, then the matter has to be restored back to the file of AO for framing of fresh assessment.

Therefore, he prayed that the assessment may be ordered de novo. Per contra, the Ld. DR opposed the plea of the assessee and submitted that since the rules permitted only e-filing of appeal before the Ld. CIT(A) and since the assessee failed to do so, the Ld. CIT(A) has rightly dismissed the appeal of the assessee. So, she prays that the assessee may be directed to file appeal through e-mode as prescribed by the rules.

3. We have heard rival submissions and gone through the facts and circumstances of the case. We do not countenance the action of the Ld. CIT(A) to have dismissed the appeal of the assessee merely because the assessee has filed the appeal in physical format and not through e-filing. This Tribunal has already taken such a view in the case of Lakshmi Maity (supra). However, it has also been brought to our notice that the AO's order has been passed without giving adequate opportunity to the assessee on the issues on which substantial additions have been made by the AO. According to Ld. AR, since the directors of the share subscribing companies were out of station they could not be produced before the AO, so the AO drew adverse inference against the assessee and made inter-alia substantial addition of share capital etc. And the Ld. AR undertakes to produce the directors of the share subscribing companies before the AO given an opportunity to do so. We having taken note of the averments made by the Ld. AR of the assessee as well as taking note of the decision of the Hon'ble Supreme Court in Tin Box, supra wherein it was held by the Hon'ble Supreme Court that if the assessee does not get proper opportunity before the AO, the matter needs to be remanded back to the AO for fresh assessment, we are inclined to restore the issues back to the AO. In Tin Box, supra the Hon'ble Supreme Court has 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 afore-stated. No order as to costs."

4. In the light of the aforesaid decision of the Hon'ble Supreme Court in Tin Box, supra and after going through the records, we are of the opinion that assessee did not get proper opportunity before the AO to substantiate its claim so, we are inclined to set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO for de novo assessment after affording reasonable opportunity of hearing to the assessee.

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

Order is pronounced in the open court on 5<sup>th</sup> January, 2022.

Sd/-

(Rajesh Kumar)  
Accountant Member

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated: 05.01.2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Assessee – M/s. Bhagyalakshmi Tie UP Pvt. Ltd., 8, Amartalla Street, 4<sup>th</sup> floor, Kolkata-700 001.
2. Revenue – ITO, Ward-6(1), Kolkata.
3. CIT(A)-2, Kolkata (sent through e-mail).
4. CIT, Kolkata.
5. DR, ITAT, Kolkata, (sent through e-mail)..

True Copy

By Order

Sr. Private Secretary/DDO  
ITAT, Kolkata Bench, Kolkata