

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.1308/Mum/2020

(निर्धारण वर्ष / Assessment Years: 2011-12)

Kaushal Premchand Luhadiya 2201, A-Wing, MIT- Niketan Tower, 90FT Road, Near Sanskruti Building, Thakur Complex, Kandivali East, Mumbai-400101.	बनाम/ Vs.	ITO-33(2)(2) Room No.846, 8 th Floor, Kautilya Bhavan, C-41 to C-43, G-Block, Bandra Kurla Complex, Bandra East, Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAWPL3781H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Hari S. Raheja
Revenue by:	Shri Vijay Kumar Soni (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 12/05/2022

घोषणा की तारीख /Date of Pronouncement: 27/05/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-45, Mumbai dated 30.12.2019 for the assessment year 2011-12.

2. At the outset, the Ld. AR of the assessee drew our attention to the impugned order of the Ld. CIT(A) which is an ex-parte order. Further, he also brought to our notice that the AO has also passed an ex-parte order u/s 144 r.w.s 147 of the Income Tax Act, 1961 [hereinafter ('the Act')]. According to the Ld. AR the ex-parte orders were passed because the assessee had entrusted his case to Shri Manoj Doshi ITP who mislead him by stating that he is appearing before the AO/CIT(A). However, only once the assessee received the impugned order, he understood that the ITP did not appear before Ld CIT(A)



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entailing dismissal of his appeal ex-parte. Therefore, he requested that since assessee did not get proper opportunity before the AO in the interest of both sides, the matter may be remanded back to AO for de-novo assessment.

3. Per contra, the Ld. DR opposes the submission of the assessee and contended that since the assessee did not turn up before the AO as well as CIT(A), the ex-parte order was passed. Therefore, the assessee does not require second chance/innings.

4. We have heard both the parties and perused the record. We note that the impugned order of Ld. CIT(A) is an ex-parte order and the AO has also passed an ex-parte order. It has been brought to our notice that the ITP who was entrusted with the case did not appear before the CIT(A) or AO which led to passing of the impugned ex-parte orders. In order to substantiate the aforesaid facts the assessee has filed before us an affidavit sworn before notary public and after having perused it and have going through the contents of the same, we are of the opinion that the assessee did not get proper opportunity before the AO. Therefore, relying upon the decision of the Hon'ble Supreme Court in similar case of **Tin Box Company Vs. CIT (249 ITR 216) (SC)** wherein the Hon'ble Supreme Court held as under: -

" 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."



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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."

5. Since we have found in the present case that no reasonable opportunity the assessee got before the AO, we relying upon the aforesaid decision of the Hon'ble Supreme Court in the case of **Tin**



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Box Company (supra) set aside the impugned order of the Ld. CIT(A) and remand the same back to the file of the AO and direct the AO to frame the assessment de-novo after hearing the assessee in accordance to law. The assessee is at liberty to file documents/material before the AO to substantiate its return of income. And we direct the assessee to be diligent before the AO during the assessment proceedings.

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

Order pronounced in the open court on this 27/05/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27/05/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai