

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.09/Mum/2022
(निर्धारण वर्ष / Assessment Years: 2012-13)

Deloitte Touche Tohmatsu India LLP (Successor of Delotte Touche Tohmatsu India Pvt. Ltd.) One International Centre, Tower-3, 32 nd Floor, Senapati Bapat Marg, Elphinstone Road (W), Mumbai-400013.	बनाम / Vs.	ACIT-Circle 6(2)(1) Room No.504, 5 th Floor, Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai- 400020.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AALFD7157J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ketan Ved
Revenue by:	Ms. R. M. Madhavi (DR)

सुनवाई की तारीख / Date of Hearing: 23/05/2022
घोषणा की तारीख /Date of Pronouncement: 09/05/2022

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) (NFAC), Delhi dated 15.11.2021 for the assessment year 2012-13.

2. At the outset, the Ld. AR of the assessee drew our attention to the fact that the First Appellate Authority (NFAC) has passed the order without giving proper opportunity to the assessee. According to the Ld. AR, the assessee had filed all the documents sought for by the CIT(A) as well as had filed application dated 23.01.2019 for admission of additional evidences (refer page no. 5 to 8 of the paper book) as well as copy of letter dated 25.10.2021 uploaded on Income Tax e-filing portal on 09.10.2021 in response to the notices dated 01.10.2021 and 11.10.2021 respectively (page no. 1 to 4 of the paper book)



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According to the Ld. AR despite adjournment application had been moved by assessee requesting for adjournment on 9.10.2021 (refer screenshot of adjournment request placed at page no. 9 to 10 of the paper book) and even though documents/submissions had been filed before the Ld. CIT(A) the first Appellate Authority (NFAC) has decided the appeal without consideration of any of the documents submitted before him and had blamed the assessee for not filing proof of supporting its claim. Further, the Ld. AR also brought to our notice that the AO while passing the assessment order also has not given proper opportunity to the assessee and disallowed interest of Rs.3,11,21,939/- u/s 36(1)(iii) of the Income Tax Act, 1961 (hereinafter “the Act”) on the premise that the loans are for capital purposes. According to the Ld. AR, the AO did not appreciate that the assessee had total interest free fund which exceeded the amount of loan granted and the disallowance made by the AO u/s 36(1)(iii) of the Act was not warranted. According to the Ld. AR even the total finance charges has not been correctly taken by the AO while computing the disallowance so according to the Ld. AR, the assessee didn't get proper opportunity before the AO, therefore relying on the decision of the Hon'ble Supreme Court in the case of **Tin Box Company Vs. CIT (249 ITR 216) (SC)** he pleaded that the issue may be remanded back to AO for fresh assessment on this issue.

3. Per contra the Ld. DR after taking note of the aforesaid fact and also the fact that the assessee had filed additional evidences before the Ld. CIT(A) since there was reasonable cause for not presenting the



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same before the AO and the fact that certain mistakes as alleged by the assessee need to be looked into as pointed out by the assessee it would be better to remit the issue back to the AO for denovo assessment.

5. We have heard both the parties and perused the record. We note that the AO has disallowed of Rs.3,11,21,939/- u/s 36(1)(iii) of the Act which according to the assessee was made without appreciating the relevant facts which could not be provided to the AO, since assessee didn't get proper opportunity before AO. Thereafter the assessee had to file additional evidence before the Ld. CIT(A)/explaining its claim. After going through the aforesaid facts we are of the opinion that the assessee did not get proper opportunity before the AO, therefore, relying on the decision of the Hon'ble Supreme Court in the case of **Tin Box Company Vs. CIT (supra)** wherein the Hon'ble Supreme Court has 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."

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.



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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 aforestated. No order as to costs."

6. Since we have found in the present case that no reasonable opportunity the assessee got before the AO, we relying on the aforesaid decision of the Hon'ble Supreme Court in the case of **Tin Box Company (supra)** set aside the impugned order of the Ld. CIT(A) and remand the issue back to the file of the AO and direct the AO to frame the assessment de-novo on the same after hearing the assessee in accordance to law. The assessee is at liberty to file documents/material written submission before the AO to substantiate its return of income. And we direct the assessee to be diligent before the AO during the assessment proceedings.



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

Order pronounced in the open court on this 31/05/2022.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/05/2022.
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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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