

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

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.2490/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2012-13)

Narendra Thacker 303-B Wing Bellona Bldg, 90 FT Road, Pant Nagar, Ghatkopar (E), Mumbai- 400075.	बनाम/ Vs.	ITO-27(2)(4) Tower No.6, Fourth Floor, Vashi Railway Station Complex, Vashi, Navi Mumbai-4000703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPT1799E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Smt. Nayana K. Kumar	

सुनवाई की तारीख / Date of Hearing: 28/11/2022

घोषणा की तारीख /Date of Pronouncement: 16/12/2022

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 27.07.2022 for the assessment year 2012-13.

2. None appeared for the assessee. However, on perusal of the grounds of appeal raised by the assessee, it is noted that the main grievance of assessee is against the action of the AO in not giving proper opportunity before making an addition of Rs.4,25,000/-.

3. Brief facts is that the assessee had filed return of income declaring income of Rs.13,12,450/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act"). Later on, the case of the assessee was selected for scrutiny under CASS. The AO noted that the assessee is mainly into share trading activity. The AO noted from AIR information (generated from the ITD system), that the assessee



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has made certain payments against his credit card bills. The AO noted that the assessee holds credit cards pertaining to HDFC bank. Against this the assessee has made payments of Rs.2,80,000/- on 31.03.2012 and another payment of Rs.1,45,000/- on 30.09.2011. The assessee's AR was given a copy of the transactions (AIR information of assessee's accounts). The AO acknowledges that the assessee has submitted the reconciliation on 19.03.2015 but according to AO, the assessee failed to file the reconciliation with respect to the credit card transactions. Therefore, according to AO the payments of credit cards of HDFC Bank remain unverifiable and therefore according to him, the same need to be treated as expenditure from unaccounted source of income. Accordingly, he added back the above mentioned two payments of Rs.2,80,000/- + Rs.1,45,000/- (total amounting to Rs.4,25,000/-) to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein the assessee pleaded that he did not get proper opportunity of being heard by the AO during the assessment proceedings [ground no. 3 before the Ld. CIT(A)]. On appeal, the Ld. CIT(A) noted that the assessee brought to his notice that he did not get opportunity to bring on record the credit card statement from the bank/HDFC and thus he did not get proper opportunity before the AO during the assessment proceedings. However, the Ld. CIT(A) dismissed the appeal of the assessee by taking note that the assessee before him had tried to deny making such expenses. From a perusal of the impugned order of the Ld. CIT(A) as well as grounds of appeal of the assessee, it is noted that the assessee did not get proper opportunity before the AO to substantiate his claim



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regarding the credit card expenses to the tune of Rs.4.25,000/-. It is noted that in similar factual situation, when the assessee did not get proper opportunity before the AO, the Hon'ble Supreme Court in the case of **Tin Box Company Vs. CIT (249 ITR 216)(SC)** reversing the order of Hon'ble High Court, Tribunal & Ld. CIT(A) 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.

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 ?"



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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 . "

4. Since it is found in the present case that no proper opportunity the assessee got before the AO, relying on the aforesaid decision of the Hon'ble Supreme Court in the case of **Tin Box Company (supra)** the impugned order of the Ld. CIT(A) is set aside and the issue is remanded back to the file of the AO; and the AO is directed to frame the assessment de-novo 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 the dispute/claim of credit card expenses.

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

Order pronounced in the open court on this 16/12/2022.

Sd/-
(**ABY T. VARKEY**)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16/12/2022.
Vijay Pal Singh, (Sr. PS)



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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