

आयकर अपीलीय अधीकरण, न्यायपीठ – “B(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)
[Before Shri A. T. Varkey, JM]

ITA No.2388/Kol/2019
Assessment Year: 2016-17

Vasan Technology Pvt. Ltd. (PAN: AAECV7427M)	Vs.	Income-tax Officer, Wd-10(4), Kolkata
Appellant		Respondent
Date of Hearing		23.01.2020
Date of Pronouncement		22.05.2020
For the Appellant		Shri Swadesh Kr. Banerjee, Advocate
For the Respondent		Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-4, Kolkata dated 15-07-2019 for the assessment year 2016-17.

2. At the outset Ld. Counsel for the assessee drew our attention to the fact that the AO has made the disallowance in respect of expenses claimed by the assessee on various heads viz., tours & travels and repairs & maintenance of Rs.14,32,955/- and Rs.2,28,434/- mainly on the reason that the assessee failed to produce direct evidence in respect of the expenses claimed and therefore, according to the AO, genuineness of the expenses could not be verified. According to the Ld. AR, the assessee company's managing director's parents had expired in this assessment year and due to their ailments, the said director was held up in the hospital and, therefore, could not oversee the income tax assessment carried out during this period. According to Ld. AR, the accounts of the assessee are audited and, therefore, assessee has all the supporting documents to prove the veracity of the expenses. So, according to Ld. AR, since there was a genuine cause for not providing the documents and no sufficient opportunity was given by the AO, if given a chance assessee would be able to produce the relevant documents to substantiate the expenses incurred by it. After hearing

both parties, it is noted that the AO has made the disallowance of expenses only on the reason that the assessee failed to produce direct evidence to substantiate the expenses claimed by it so according to AO, he could not verify the genuineness of the claim. Be that as it may, I note that assessee has brought to my notice that its director's parents expired during the year under consideration and, therefore, he was held up in hospital discharging his pious obligation by looking after them in the Hospital. Since the assessee could not produce the evidence, AO has disallowed the expenses. Since there is a reasonable cause for the assessee not to appear before the AO, in the interest of Justice and fairplay, I set aside the impugned order of Ld. CIT(A) and remand the matter back to the file of AO for fresh adjudication. For doing so, I rely on the decision of the Hon'ble Supreme Court in the case of Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC), 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 straightaway agree with the assessee's submission that the Income-tax Officer 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.

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.

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."

3. In the light of the discussion (supra) and relying on the decision of Hon'ble Supreme Court in Tin Box Company (supra), I set aside the impugned order of the Ld. CIT(A) and remand the matter back to the file of AO for fresh adjudication. Needless to say, the AO to afford reasonable opportunity of being heard to the assessee and the assessee to diligently participate in the assessment proceedings without fail and file documents to substantiate its plea. Though during the hearing, I directed the assessee/ld. A/R to appear before the AO on 15.04.2020 along with this order it is noted that due to COVID-19 pandemic and lockdown ordered by the Govt. of India, this order could not be pronounced/passed. In the light of the lock down, I direct the assessee/ld. A/R to approach the office of the Assessing Officer after the lock down [as per the instructions of the Union Government] and thereafter the AO to give dates of hearing and then the AO shall decide the issue of expenses incurred by the assessee afresh in accordance to law.

3.1. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, I rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020*. In light of the above discussion, the appeal of assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 22nd May, 2020.

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :22nd May, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Vasan Technology Pvt. Ltd., 4B, Nandlal Jew road, Hazra, Kolkata-700 026..
2. Respondent - ITO, Ward-10(4), Kolkata.
3. CIT(A)-4, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar