

SUPREME COURT OF INDIA

Tin Box Co., New Delhi

Vs.

C.I.T., New Delhi

C.A.No.6517-6518 of 2001

(S. P. Bharucha, N. Santosh Hegde and Y. K. Sabharwal JJ.)

27.02.2001

ORDER

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 straightway agree with the assessee's submission that the I.-T.O. 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 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 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. No order as to costs. Appeals allowed.