

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

Before Shri D.T. Garasia (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.5790/Mum/2015
(Assessment year 2010-11)

Proma Industries Ltd 11/12, Rayfreda, 2 nd Floor Sir M.V. Marg, Chakala Andheri (E), Mumbai-93 PAN : AAACP6230G		ITO, Wd.8(2)(4), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Keyuri Desai
Respondent by	Shri Suman Kumar

Date of hearing	27-09-2017
Date of pronouncement	11 -10-2017

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against the order of the CIT(A)-17, Mumbai dated 21-08-2014 and it pertains to AY 2010-11. The assessee has raised following grounds of appeal:-

"1.1 The Learned Commissioner of Income - tax (Appeals) - 17, Mumbai [LC. CIT (A)], erred in confirming the action of the Income Tax Officer, Ward - 8 (2) (4), Mumbai ["the A.O."] in passing the order ex - parte and dismissing the appeal on the ground that the Appellant was not interested in pursuing the appeal.

1.2 While doing so, the Ld. CIT (A) erred in confirming the action of

the A.O. and in passing the order without giving proper, effective and sufficient opportunity of being heard to the Appellant.

1.3 Without prejudice to the above, the Ld. CIT (A) failed to appreciate that the Appellant was prevented from reasonable causes for riot been able to represent before the Ld. CIT (A).

1.4 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

WITHOUT PREJUDICE TO THE ABOVE

2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 8 lacs, being the amount received towards issue of preference shares, u/s. 68 of the Income - tax Act, 1961, on account of alleged unexplained cash credit.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.1 The Ld. CIT (A) erred in confirming the addition of the A.O. in making disallowance of Rs. 4,11,935/-, being legal and professional charges incurred by the Appellant, by regarding the same as capital in nature.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.”

2. The brief facts of the case are that the assessee engaged in the business of manufacturing of textile products filed its return of income for the AY 2010-11 on 14-10-2010 declaring total income of Rs.6,80,720 computed under the normal provisions of the Act and book profit of Rs.26,44,068 computed u/s 115JB of the Act. The case was selected for scrutiny and notices u/s 143(2) and 142(1) along with questionnaire were issued. In response to notice the authorized representative of the assessee attended from time to time and

submitted details as called for. The assessment was completed u/s 143(3) on 28-03-2013 determining the total income at Rs.19,46,460 under normal provisions of the Act, interalia making disallowance of unexplained credit towards share premium account u/s 68 of the Act for Rs.8 lakhs, disallowance of legal and professional charges of Rs.4,11,935, disallowance of ROC filing fees and registration expenses of Rs.48,805. Aggrieved by the assessment order, the assessee preferred appeal before CIT(A).

3. Before the CIT(A), the assessee neither appeared nor filed any details despite fixing the case for hearing on 13-05-2014, 26-05-2014, 10-06-2014, 07-08-2014 and 19-08-2014. Therefore, the CIT(A), for the detailed reasons recorded in his order dated 21-08-2014 dismissed the appeal filed by the assessee and upheld additions made by the AO towards cash credits u/s 68, disallowance of legal and professional charges and disallowance of ROC filing fees and registration expenses. Aggrieved by the order of CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in confirming the action of the AO in passing the order exparte and dismissing the appeal on the ground that the assessee was not interested in pursuing the appeal. The Ld.AR further submitted that the Ld.CIT(A) was erred in not giving

proper, effective and sufficient opportunity of being heard thereby rejecting the case of the assessee behind the back and in violation of principles of natural justice. The assessee could not appear before the AO for the reasons beyond his control. Therefore, the case may be set aside to the file of the CIT(A) and one more opportunity may be given to the assessee to justify its case.

5. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The CIT(A) dismissed the appeal filed by the assessee ex parte on the ground that the assessee could not appear to justify his case despite fixing the case for hearing on various occasions. The CIT(A) further observed that every court that has to decide on a matter of dispute inherently possesses the power to dismiss the case for default for non prosecution from the litigant's side. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi judicial body is under no obligation to keep the matter pending on or to pursue the matter on behalf of the complainant, who had instituted the proceedings. Therefore, by relying upon certain judicial precedents including the decision of Hon'ble Bombay High Court in the case of Chemipol vs UOI (Central Excise) Appeal No. 62 of 2009 and other decisions, dismissed the appeal filed by the assessee for non prosecution and confirmed additions made by the AO. No

doubt, the CIT(A) has given number of opportunities to the assessee to argue its case. But the fact remains that the assessee was prevented from reasonable cause for not been able to represent before the Ld.CIT(A). Therefore, considering the facts and circumstances of the case and also keeping view the natural justice, we are of the view that the issue needs to be set aside to the file of the CIT(A) to give one more opportunity of hearing to the assessee to justify its case. Hence, we set aside the issue to the file of the CIT(A) and direct him to consider the issue afresh after affording an opportunity of hearing to the assessee. Needless to say the assessee is directed not to seek any adjournment before CIT(A).

6. In the result, appeal filed by the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 11th October, 2017.

Sd/-

sd/-

(D.T. Garasia)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 11th October, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai