



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI ' SMC' BENCH, RANCHI**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.259/Ran/2017
Assessment Year : 2006-07

M/s. Aroma Fibre Glass Pvt Ltd., Netaji Road, Infront of Durga Puja Maidan Vidyapati Nagar, Baridih, Jamshedpur	Vs.	ITO, Ward 1(1), Jamshedpur
PAN/GIR No.AADCA 3429 P		
(Appellant)	..	(Respondent)

Assessee by : Shri Devesh Poddar, Adv
Revenue by : Shri A.K.Mohanty, JCIT

Date of Hearing : 22/11/ 2018
Date of Pronouncement : 22/11/ 2018

ORDER

This is an appeal filed by the assessee against the order of the CIT(A), Jamshedpur dated 14.8.2017 for the assessment year 2006-07

2. The sole issue involved in this appeal is that the CIT(A) was not was not justified in confirming the penalty of Rs.50,000/- levied u/s.271(1)(b) of the Act.

3. The brief facts of the case are that the Assessing Officer observed that the assessee did not appear on the dates of hearing fixed by issuing notices on 17.10.2007, 18.1.2008, 13.8.2008 and

9.9.2008 and, therefore, he levied penalty u/s.271(1)(b) of the Act for failure to comply with the notices u/s.143(2) and 142(1) of the Act @ Rs.10,000/- for each default.

4. On appeal, the CIT(A) confirmed the action of the Assessing Officer on the ground that at Sl.No.12 of the appeal, the assessee has stated that he is enclosing herewith the Xerox copy of notices with wrong address issued u/s.271(1)(b) of the I.T.Act and at Sl.No.13 stated that he is enclosing Xerox copy of return of income filed electronically and no such documents were filed.

5. At the time of hearing, Id A.R. of the assessee submitted that against the order in quantum appeal, the assessee filed appeal before the Tribunal and the Tribunal vide its order dated 8.3.2016 in ITA No.18/Ran/2016 restored the matter back to the file of the Assessing Officer on the ground that the Assessing Officer has passed the order without discussing anything regarding the nature of addition and the CIT(A) also dismissed the appeal without discussing upon the merits of the case. Hence, it was his submission that as the assessment itself was set aside by the Tribunal back to the file of the Assessing Officer, therefore, the levy of penalty does not survive u/s.271(1)(b) of the Act.

6. On the other hand, Id D.R. vehemently opposed the arguments of Id A.R. of the assessee and submitted that since the assessee failed to put in appearance before the Assessing Officer on the dates fixed for hearing, he was fully justified in levying the penalty u/s.271(1)(b) of the Act.

7. After hearing the rival submissions and perusing the materials on record, I find that as the assessee failed to put in appearance before the Assessing Officer in response to notices issued on five dates of hearing, therefore, he levied penalty u/s.271(1)(b) of the Act @ Rs.10,000/- for each default committed by the assessee. The assessee submitted before the CIT(A) that notices of hearing were sent on wrong address and, therefore, the assessee could not comply with the assessee. None of the lower authorities has brought any evidence on record before levying the penalty to show that notice of hearing sent to the assessee was served on the assessee or not. Since the service of notice on the assessee for the date of hearing fixed has not been established by revenue, in my considered view, levy of penalty cannot be sustained in law. I, therefore, set aside the orders of lower authorities and delete penalty of Rs.50,000/- levied under section 271(1)(b) of the Act and allow the grounds of appeal of the assessee.



8. In the result, appeal of the assessee is allowed

Order pronounced on 22 /11/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Ranchi; Dated 22/11/2018

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : M/s. Aroma Fibre Glass Pvt Ltd., Netaji Road, Infront of Durga Puja Maidan Vidyapati Nagar, Baridih, Jamshedpur
2. The Respondent. ITO, Ward 1(1), Jamshedpur
3. The CIT(A)- Jamshedpur
4. Pr.CIT- Jamshedpur
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

By order

Sr. Pvt.Secretary,
ITAT, Ranchi
on tour