

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.269/LKW/2018
Assessment Year 2006-07

M/s Homera Tanning Industries Pvt. Ltd., 150 Feet Road, Jajmau, Kanpur 208010 PAN AAACH3613H	Vs.	DCIT-06, Kanpur 208001
(Appellant)		(Respondent)

Appellant by	Shri Sworan Singh, FCA
Respondent by	Shri C.K. Singh, DR
Date of hearing	01/02/2019
Date of pronouncement	08/02/2019

ORDER

PER: A.D. JAIN, VICE PRESIDENT:

This is assessee's appeal for Assessment Year 2006-07, taking the following grounds:-

- “1. *Because the CIT(A) has erred on facts and in law in summarily dismissing the appeal ex-parte without giving any opportunity of being heard.*
2. *Because the CIT(A) has failed to appreciate the facts and circumstances of the case and should have passed a speaking order based on Statement of Facts and Grounds of Appeal as mentioned in the Memorandum of Appeal.*
03. *Because the assessee being prevented by sufficient and reasonable cause in not appearing before the CIT(A), the reason being the illness of the person looking after the tax matters, the CIT(A) was not justified in upholding the levy of penalty of Rs. 1,82,960/-.*
04. *Because on a proper consideration of facts and circumstances of the case, there being neither any*

concealment of income nor furnishing of inaccurate particulars of its income, the penalty imposed by the Assessing Officer under section 271(1)(c) of the Act of Rs.1,80,960/- and upheld by the CIT(A) is bad in law and be deleted.

5. *Because the addition of Rs.5,00,000/- made while framing the assessment u/s 143(3) is on adhoc cum estimate basis, and there being no satisfaction recorded in terms of section 271(1)(c), the penalty imposed by the Assessing Officer and upheld by the CIT(A) is without any charge, bad in law and be deleted.*
6. *Because there being no under valuation of closing stock, the Assessing Officer has wrongly made the addition of Rs.5,00,000/- though agreed by the assessee to purchase peace on specific understanding that no penal action would be taken, the penalty imposed by the Assessing Officer and upheld by the CIT(A) is bad in law and be deleted.*
7. *Because there is no tax impact in as much as the addition in closing stock would stand neutralized by the opening stock of the subsequent year, the Assessing Officer has failed to appreciate the facts and has wrongly imposed the penalty of Rs.1,82,960/- which penalty is bad in law and be deleted.*
8. *Because there being no specific charge in the notice for levy of penalty under section 271(1)(c), and the show cause notice issued being silent on the issue, the penalty imposed is bad in law and be deleted.”*

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non prosecution, observing that notices dated 19.01.2017, 03.02.2017 and 13.09.2017 for compliance on 01/02/2017, 19.02.2017 and 26.09.2017 were served on the address submitted by the assessee in its memo of appeal; that however, no written submission or paper book had been filed in support of any of the grounds of appeal taken;

and that none had attended on behalf of the assessee. Such service of notices has, however, been disputed by the assessee.

3. We have heard the rival parties and have gone through the material placed on record. We noted that the Id. CIT(A) has passed the ex-parte order as according to him, nobody has appeared on the date when the appeal was fixed for hearing before him. We also noticed from the order of the CIT(A) that he has summarily decided the appeal of the assessee without giving any cogent reason and his order is non speaking order. Under these circumstances, we feel that one more opportunity should be given to the assessee as Id. CIT(A) has not decided the appeal on merits. The provision of section 250 which deals with the procedure in appeal before the Id. CIT(A), allows a right to an assessee to be heard at the time of hearing of appeal. Even the natural justice demands that no appeal should be disposed of without being heard the party or without giving him the proper and sufficient opportunity. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the CIT(A) with the direction that the CIT(A) shall refile the said appeal and decide the appeal afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by Id. CIT(A) and not to

seek undue adjournment and co-operate with Id. CIT(A) in disposing of the appeal.

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

Order pronounced in the open court on 08/02/2019.

Sd/-

**(T.S. Kapoor)
Accountant Member**

Sd/-

**(A.D. Jain)
Vice President**

Aks –
Dtd. 08/02/2019

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

Assistant Registrar