

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7997/Del/2018
Assessment Year: 2005-06

Archit Securities P. Ltd.,
26A, Sadhna Enclave,
New Delhi.

Vs. ITO,
Ward-2(4),
New Delhi.

PAN: AAACA7849J

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Ms Subhi Goyal, CA
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	07.05.2019
Date of Pronouncement	:	13.05.2019

ORDER

This appeal by the assessee is directed against the *ex parte* order dated 13th April, 2016 passed by the CIT(A)-32, New Delhi, relating to Assessment Year 2005-06.

2. Levy of penalty of Rs.44,82,582/- u/s 271(1)(c) of the IT Act by the Assessing Officer which has been upheld by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee filed its return of income on 29th October, 2005 declaring the total income of Rs.3,24,055/-. On the basis of the

information received from the Investigation Wing of the Department that the assessee company has made transactions with M/s Tarun Goel & Associates group companies/firms which was detected during the search proceedings u/s 132 and it was noted that the group was providing accommodation entries in the shape of share capital/share premium, the case of the assessee was reopened u/s 147 and notice u/s 148 was issued. The Assessing Officer completed the assessment u/s 143(3)/148 on 15th March, 2013 determining the total income at Rs.1,25,74,055/- wherein he made an addition of Rs.1,22,50,000/-. Subsequently, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the IT Act. Rejecting the various explanations given by the assessee the Assessing Officer levied penalty of Rs.44,82,582/- u/s 271(1)(c) of the IT Act. Since none appeared on behalf of the assessee, the CIT(A), in the *ex parte* order passed by her, dismissed the appeal for non-prosecution.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising various grounds.

5. I have heard the rival arguments made by both the sides and perused the orders of the authorities below. It is an admitted fact that due to non-appearance, the Id.CIT(A), relying on the decision of the Tribunal in the case of *CIT vs. Multiplan India Ltd. reported in 38 ITD 320 (Del)*, the decision of the Hon'ble Supreme Court in the case of *CIT vs. B.N. Bhattacharya reported in 118 ITR 461 (SC)* and various other decisions, dismissed the appeal for non-prosecution. However, she has not decided the appeal on merit. Considering the totality of the facts of the case and in

the interest of justice, I deem it proper to restore the issue to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) and explain its case failing which the CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposes.

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

The decision was pronounced in the open court on 13.05.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: May, 2019

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

Asstt. Registrar, ITAT, New Delhi