

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.1999/Del/2017  
Assessment Year: 2007-08

Bhayana Interiors & Furnishers Pvt. Ltd., 7, Factory Road, Near Safdarjung Hospital, Delhi.	Vs	ITO, Ward-2(4), New Delhi.
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PAN: AABCB8161D

(Appellant)

(Respondent)

Assessee by	:	Shri Deepak Malik, Advocate
Revenue by	:	Shri Sanjay Kapoor, Sr. DR
Date of Hearing	:	09.12.2019
Date of Pronouncement	:	17.12.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the ex parte order dated 27<sup>th</sup> December, 2016 of the CIT(A)-2, New Delhi relating to assessment year 2007-08.

2. Levy of penalty of Rs.21,37,185/- by the AO and 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 is a private limited company and filed its return of income on 31.10.2007 declaring an income of Rs.1,78,961/-. The AO completed the assessment u/s 143(3) on 7<sup>th</sup> December, 2009 determining the total income of Rs.1,98,699/-. Subsequently, the case was set aside by the Id.CIT, Delhi u/s 263 of the IT Act. Subsequent to such setting aside of the order by the CIT, the AO completed the assessment determining the total income at Rs.65,28,297/- wherein he made various disallowances. Subsequently, the AO initiated penalty proceedings u/s 271(1)(c). Rejecting the various explanations given by the assessee, the AO levied penalty of Rs.21,37,185/- being 100% of the tax sought to be evaded on the following additions:-

1. Disallowance of donation	Rs.78,568/-
2. Disallowance S.D. u/s 24(b)	Rs.16,16,125/-
3. Disallowance on a/c of difference in the sale proceeds	Rs.16,52,905/-
4. Disallowance of commission	
5. Disallowance of travelling expenses pertaining to A.Y. 2008-09	Rs.10,32,000/- Rs.15,00,000/-
6. Disallowance of Travelling expenses	Rs.4,50,000/-

4. Since none appeared on behalf of the assessee before the CIT(A) despite a number of opportunities granted by him, the Id.CIT(A) sustained the penalty so levied by the AO u/s 271(1)(c) of the Act.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. We have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that despite granting a

number of opportunities by the CIT(A), the assessee did not appear before him for which the Id.CIT(A) in the *ex parte* order passed by him, sustained the penalty so levied by the AO u/s 271(1)(c) of the Act. It is the submission of the Id. Counsel for the assessee that given an opportunity, the assessee is in a position to explain his case before the CIT(A). Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issues to the file of the CIT(A) with a direction to give 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 extend its cooperation failing which the Id. CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court on 17.12.2019.

Sd/-

(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

Dated: 17<sup>th</sup> December, 2019

dk

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi