

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.7317/Mum/2018
(Assessment Year: 2010-11)**

Al-Rakyan Apparels & Exports Pvt.Ltd. Plot No.16, Walbhat Road Cama Ind.Estate Goregaon East Mumbai-400 063	Vs.	ITO-12(1)(1) Room No.129A Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AAECA0525F		
Appellant)	..	Respondent)

Assessee by	Shri Prateek Jain, AR
Revenue by	Shri Michael Jerald, DR
Date of Hearing	12/02/2020
Date of Pronouncement	21/02/2020

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-20, Mumbai, dated 04/07/2018 and it pertains to Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal.

1. *On the facts and circumstances of the case and in law the Ld Commissioner of Income Tax (Appeals) erred in passing the impugned order without affording adequate opportunity of being heard, as per the ground Stated in the order or otherwise.*

2. *On the facts and circumstances of the Appellant's case and in Law, the notice issued under section 274 read with section 271(1)(c) by the Ld. Assessing Officer without recording any satisfaction is bad in law and the consequential penalty order passed under section 271(1) of the Act is bad in law and not sustainable in the eyes of law.*

3. On the facts and circumstances of the appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the action of Ld Assessing Officer's in imposing penalty of Rs. 4,02,490/- by invoking provisions of section 271(1)(c) of the Income Tax Act, 1961.

3. The brief facts of the case are that the assessee has filed its return of income for AY 2010-11 on 01/10/2010, declaring total income at Rs. 21,41,920/- under normal provisions of the Act, and book profit of Rs. 84,73,560/- u/s 115JB of the I.T.Act, 1961. The assessment was completed u/s 143(3) of the I.T.Act, 1961 on 07/02/2013, determining the total income at Rs.43,54,373/- after making disallowances out of Diwali expenses of Rs. 2,02,758/- and additions of Rs. 20,09,695/- towards difference between labour charges received, as per books of accounts of the assesee and receipts, as per Form 26AS reported in Income tax data base. The assessee has filed an appeal against assessment order and challenged additions made by the Ld. AO towards disallowances of Diwali expenses and additions towards labour charges. The Ld.CIT(A), vide its order dated 14/03/2014 has allowed partial relief towards addition on account of labour charges. Thereafter, the Ld. AO has initiated penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 and after considering relevant submissions of the assessee has levied penalty of Rs. 4,02,490/-, which is equal to 100% of tax sought to be evaded.

4. Aggrieved by the penalty order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee, neither appeared, nor filed any details to support its case, which is evident from the fact that inspite of giving five dates of hearing, the assessee did not appear before the Ld. AO to file necessary evidences to support its case. Therefore, the Ld.CIT(A) has decided

the appeal *ex-parte* on the basis of information available on record and confirmed penalty levied by the Ld. AO u/s 271(1)(c) of the Act, in respect of additions made towards difference in labour charges, as per books of account and as per Form 26AS. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The first and foremost arguments of the Ld. Counsel for the assessee is that the Ld.CIT(A) has erred in passing the order in violation of principles of natural justice. The Ld. AR for the assessee further submitted that although, the Ld.CIT(A) had given five dates of hearing, the assessee could not appear before the Ld.CIT(A), but the reasons for non appearance before the Ld.CIT(A) are beyond control of the assessee, which prevented the assessee from appearing for hearing as on the dates fixed for disposal of appeal. Therefore, he submitted that one more opportunity may be given to go back to the Ld.CIT(A) to explain its case. The Ld. DR, on the other hand strongly opposing the arguments of the Ld. Counsel for the assessee submitted that the assessee is neither appeared, nor filed any details despite giving five dates of hearing, which is evident from the fact that the Ld.CIT(A) has narrated dates of hearing in para 4,1 of his order. Therefore, there is no merit in arguments of the Ld. Counsel for the assessee that no adequate opportunity of hearing was given to the assessee and accordingly, there is no reason to set aside the issue to the file of the Ld.CIT(A).

6. Having considered arguments of both the sides, we are of the considered view, it is the responsibility of the person, who filed an

appeal before the authorities is to prosecute its appeal with necessary evidences for speedy disposal of appeals. Otherwise, the authorities left with no option to dispose of appeals in accordance with materials available on record. But, fact remains that when, the assessee explains the reasons for not appearing before the authorities and such reasons are bonafide, then it is the duty of the appellate authorities to decide the issues on merits in accordance with law instead of disposing appeal on technical grounds. In this case, on perusal of order passed by the Ld.CIT(A), we find that although, the Ld.CIT(A) has disposed-off appeal filed by the assessee, but said appeal has been disposed-off for non prosecution without discussing the issues on merits. Therefore, considering the facts and circumstances of this case, we are of the considered view that the issue needs to go back to the file of the Ld.CIT(A) to give one more opportunity of hearing to the assessee to file necessary evidences to support its case. Hence, we set aside the appeal to the file of the Ld.CIT(A) to decide in accordance with law. Needless to say, the assessee shall not seek any adjournment without any valid reasons. In case, assessee seeks adjournments without valid reason, then the Ld.CIT(A) is free to dispose of the appeal in accordance with law on the basis of material available on record.

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

Order pronounced in the open court on this 21 /02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 21/02/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai