

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(D)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]

[Through Virtual Court]

I.T.A. No. 1819/Kol/2019

Millenium Concrete Creation Pvt. Ltd.....Appellant
Subhash Pally, Dalkhola,
West Bengal - 733201.
[PAN: AADCM 9921 G]

Vs

DCIT, Circle 2, Jalpaiguri.....Respondent
Central Revenue Building, Race Course Road,
Nayabasti, Japaiguri - 735101.

Appearances by:

Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.

Shri Jayonta Khanra, JCIT appearing on behalf of the Revenue.

Date of concluding the hearing : July 01, 2020

Date of pronouncing the order : July 01, 2020

ORDER

PER P.M. JAGTAP, VICE-PRESIDENT (KZ)

This appeal filed by the assessee is directed against the order of Ld. CIT(Appeals) - Jalpaiguri dated 14.12.2018 passed ex-parte whereby he confirmed the penalty of Rs. 1,50,000/- imposed by the AO u/s 271B of the Income Tax Act, 1961.

2. At the outset, it is noted that there is a delay of 122 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, an application seeking condonation of the said delay is filed by the assessee and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of 122 days on the part of the assessee in filing this appeal before the Tribunal. Even the learned DR has not raised any objection in this regard. We, therefore, condone the said delay and proceed to dispose of the appeal of the assessee on merit.

3. The assessee in the present case is a company which is engaged in the business of contracting. There was a failure on the part of the assessee to furnish the return of income for the year under consideration within the due date. It also failed to file its return of income in response to the notice issued by the AO u/s 142(1) of the Act. The AO, therefore, was left with no alternative but to complete the assessment to the best of his judgement u/s 144 of the Act on the basis of the material available on record. In the assessment so completed vide an order dated 28.03.2015, he took the gross receipts of the assessee from the business of contracting at Rs. 3,77,04,061/- from the data in Form 26AS from the ITD system and estimated the income of the assessee by applying a net profit rate of 8%. Since there was also a failure on the part of the assessee company to get its account audited for the year under consideration, penalty proceedings 271B were also initiated by the AO and since there was no explanation whatsoever offered by the assessee in response to the show cause notice issued during the course of the said proceedings, the AO proceeded to impose a penalty of Rs. 1,50,000/- u/s 271B of the Act.

4. The penalty imposed by the AO was challenged by the assessee in the appeal filed before the Ld. CIT(A) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Ld. CIT(A) dismissed the appeal of the assessee and confirmed the penalty imposed by the AO u/s 271B vide his appellate order dated 14.12.2018 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised by the assessee in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the learned counsel for the assessee has submitted that no notice of hearing was ever served by the Ld. CIT(A) on the assessee and the appeal of the assessee was dismissed by him vide his impugned order passed ex-parte without giving proper and sufficient opportunity of being heard to the assessee. Even the ld. DR has not been able to dispute this position which is clearly apparent from the perusal of the impugned order of the Ld. CIT(A) where there is no mention of any notice of hearing having been issued or served on the assessee. We, therefore, find it fair and proper and in the interest of justice to set aside the impugned order passed by the Ld. CIT(A) ex-parte dismissing the appeal of the assessee and remit the matter back to him for disposing of the appeal of the assessee on merit in accordance with law after giving the assessee proper and sufficient opportunity of being heard. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the Ld. CIT(A) and shall extend all the possible cooperation in order to enable the Ld. CIT(A) to dispose of the appeal expeditiously.

6. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 1st July, 2020.

Sd/-
(A.T. Varkey)
JUDICIAL MEMBER

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 01/07/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. Millenium Concrete Creation Pvt. Ltd., Subhash Pally, Dalkhola, West Bengal – 733201.
2. DCIT, Circle – 2, Jalpaiguri.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata