

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-I', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)

ITA NO. 7118/DEL/2019
A.Y. : 2007-08

M/S STANDARD TIMES PVT. LTD., C/O RAJ KUMAR & ASSOCIATES, CA L-7A (LGF), SOUTH EXTN., PART-II, NEW DELHI - 110 049 (PAN: AABCS3651B)	Vs.	ITO, WARD 24(2), NEW DELHI ROOM NO. 236, C.R. BUILDING, IP ESTATE, NEW DELHI -2
(Appellant)		(Respondent)

Assessee by	Sh.Raj Kumar, CA & Sh. Sumit Goel, CA
Department by	Ms. Rakhi Vimal, Sr. DR.

ORDER

PER H.S. SIDHU, JM:

This appeal filed by the Assessee is directed against the
impugned order dated 14.06.2019 passed by the

Ld. CIT(A)-8, New Delhi in relation to assessment year 2007-08 on the following grounds:-

1. That in the assessment order, the initiation of penalty is fatally defective so much so no specific charge has been mentioned making the whole proceedings unsustainable in law.
2. That the penalty notice issued is fatally defective for not specifying the charge, so all subsequent proceedings including penalty order is unsustainable in law.
3. That under the facts and circumstances the provisions of section 271(1)© not applicable and the penalty levied is unsustainable even on merits.
4. That under the facts and circumstances no proper and reasonable opportunity of hearing has been allowed by the lower authorities.

2. Facts narrated by the Revenue Authorities are not disputed by both the parties, therefore, no need to repeat the same for the sake of convenience.

3. At the time of hearing, Ld. Authorised Representative for the Assessee reiterated the contentions raised by the assessee

in the grounds of appeal and stated that Ld. First Appellate Authority has wrongly dismissed the appeal filed by the Assesee whereas the penalty notice issued by the Assessing Officer is defective and not specified the charge on the issue. He further submitted that there are various case laws wherein exactly similar penalty in dispute has been deleted. The Bench observed that in view of the finding of the Ld. CIT(A) mentioned in para no. 3 & 4 at page no. 2-4 of the impugned order, the assessee remained non-cooperative before the Ld. First Appellate Authority and has also not filed any written submissions and therefore, the Ld. First Appellate Authority has upheld the penalty in dispute exparte. The Bench asked the Assessee's counsel the reasons for non-appearance before the Ld. CIT(A). To answer the same, Ld. Counsel for the assessee stated that assessee has not received any notice, therefore, could not appear before the Ld. CIT(A). He further stated that even otherwise, the penalty notice is defective for not specifying the charge. So on subsequent proceedings including the penalty order is unsustainable in the eyes of law. In support of this contention, he also filed a Paper Book in which he has attached the various case laws. Finally, he requested

that the penalty in dispute may be deleted by allowing the appeal filed by the Assessee.

4. Ld. Sr. DR strongly objected the request of the Ld. Authorised Representative for the Assessee and stated that Assessee remained non-cooperative before the revenue authority and revenue authority has rightly levied the penalty in dispute which has rightly been upheld by the Ld. CIT(A). She requested that the appeal filed by the Assessee may be dismissed.

5. We have heard both the parties and perused the orders passed by the Revenue Authorities especially the impugned order dated 14.06.2019 passed by the Ld. CIT(A)-8 i.e. para no. 3-4 at page no. 2-4. For the sake of convenience, the para no. 3-4 of the impugned order are reproduced as under:-

"3. During appellate proceedings, various notices u/s. 250 of the Act were issued at the addresses given by appellant in appeal Form No. 35, fixing hearing dates, as mentioned herein below:-

S.No	Notice issue date	Hearing date fixed	Remarks
1	29.04.2019	06.05.2019	The notice was duly sent by email

			on rajkumar ca@yahoo.com on 29.04.2019, as provided in the Form No. 35. Neither anybody attended nor any adjournment application was filed.
2	15.05.2019	10.06.2019	The notice was duly sent by email on rajkumar ca@yahoo.com on 15.05.2019, as provided in the Form No. 35. Director of the company attended and requested for adjournment with a reason that appeal is till under preparation. The hearing was adjourned to 11.06.2019 asking the Director to file the written submission and paper book if any.
3		11.06.2019	Again on 11.06.2019, an adjournment letter was received stating that AR of the assessee had to go abroad for some unprecedented work. It has been held by Hon'ble Supreme Court in Civil Appeal No. 9142-9144 of 2010 in the case of Ram Siromani Tripathi & Ors. Vs. State of UP & Ors. (vide order dated 07.02.2019) that the counsel being out of station is not a ground to seek the adjournment. The Hon'ble Apex Court dismissed the appeal of the appellant under no circumstances, application for restoration shall be entertained. Therefore, another request of the adjournment was not found to be reasonable. No written submission were even filed till today i.e. 14.06.2019, the date of passing of the order.

3.1 The fixation notices were sent by email which was provided by appellant company, in appeal Form No. 35:-

E-Mail: rajkumar CA@yahoo.com

M/s Standard Times Pvt. Ltd.

119, F.I.E., Industrial Area,

Patparganj, New Delhi- 110 092

3.2 The e-mail provided in appeal form no. 35 was duly verified by Sh. Vikas Gupta, the appellant. The email information provided in appeal form no. 35, was duly verified by appellant himself and during proceedings, there was no communication about any e-mail change. Despite issuance of various fixation notices, appellant has neither attended appellate proceedings nor has ensured to file written submissions and paper book to enable hearing of this appeal. Record, as mentioned in above table, does go to show that necessary opportunity of being heard, has been allowed to appellant in present appeal by issuing various fixation notices u/s. 250 of the Act which have not been responded to by the appellant company to file written submissions and paper book, in support of grounds appeal taken therefore it emerges that appellant is not interested in disposal of present appeal and

there is no grievance also, as appellant is not pursuing the appeal in response to various fixation notices.

4. *In view of above facts and circumstances, it is held that appellant is not serious enough in pursuing his appeal which was filed on 30.07.2018. The appellant at whose instance present appeal has been filed and thereafter necessary steps have not been taken by appellant to attend to appellate proceedings in response to fixation notices issued, therefore present appeal filed by appellant is dismissed, in light of observations made by Hon'ble Madhya Pradesh High Court in case of Estate of Late Tukojirao Holkar vs. CWT (1997) 223 ITR 480 (MP), while dismissing appellant's reference, in their order dated 11.03.1996 in Misc. Civil NO. 302 of 1991, which were as under:-*

"For the foregoing reasons, we are of the opinion that if the party at whose instance

the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, this court is not bound to answer the reference. We refuse to answer the reference and also saddle the assessee with the cost of the department quantified at Rs. 150/-."

5.1 No doubt that Ld. CIT(A) has given various opportunities to the assessee and in response to the same, assessee remained non-cooperative before the Ld. CIT(A) and the Ld. CIT(A) has held that the appellant is not serious enough in pursuing his appeal which was filed on 30.07.2018 and the assessee has not taken any necessary step to attend the appellate proceedings in response to the fixation notices issued and dismissed the appeal filed by the Assessee, in light of the various judgments passed by the Hon'ble High Courts which the Ld. CIT(A) has mentioned in his impugned order.

5.2 After going through the orders passed by the revenue authorities, we are of the view that no doubt that the assessee

remained non-cooperative before the revenue authorities especially before the Ld. First Appellate Authority. But in our view the grounds raised by the Assessee in the present Appeal are very much important to decide the issues in dispute which have not been decided by the Ld. CIT(A). We have gone through the various grounds raised by the Assessee before the Ld. CIT(A) especially the initiation of penalty is fatally defective so much so, no specific charge has been mentioned which makes the whole proceedings unsustainable in law, which has not been decided by the Ld. CIT(A).

5.3 Keeping in view of the facts and circumstances of the case present case and the grounds of appeal raised before the Ld. CIT(A) as well as grounds raised in the present appeal and in the interest of justice, we are of the view that the issues in dispute require thorough consideration at the level of the Ld. CIT(A), which have not been decided by the Ld. CIT(A). Therefore, in the interest of justice, we are setting aside the issues in dispute to the Ld. CIT(A) to decided the same, afresh, as per law, after giving full opportunity to the assessee as required under the law. Keeping in view of the non-

appearance as argued by the Ld. Counsel of the assessee that assessee could not appear before the Ld. CIT(A) due to non-receipt of notices, we are directing the Assessee through his Ld. Authorised Representative/Counsel to appear before the Ld. CIT(A) on **28.10.2020**, as per law for substantiating his case before the Ld. CIT(A).

6. In the result, the Assessee's Appeal is allowed for statistical purposes.

The decision is pronounced on 31.08.2020.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER
"SRB"

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi