

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA

**Before: Shri P.M. Jagtap, Vice-President (KZ) and
Shri A.T. Varkey, Judicial Member**

**I.T.A No. 302/Kol/2020
A.Y: 2009-10**

M/s. Fabline Engineers
Pvt. Ltd.
PAN: AANCS 0935N
[Appellant]

Vs. Income Tax Officer
Ward 5(3), Kolkata

[Respondent]

For the Appellant : Shri Abhishek Bansal, CA, ld. AR
For the Respondent : Shri Jayanta Khanra, JCIT, ld. Sr. DR

Date of hearing (Virtual) : 05-10-2020
Date of pronouncement : 05-10-2020

ORDER

Shri P.M. Jagtap, V.P.:

This appeal preferred by the assessee is directed against the order of the Ld. CIT (Appeals) - 7, Kolkata dated 28-02-2018 passed *ex parte*, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is a company, which is engaged in the business of share dealing & investment. The original return of income for the A.Y under consideration was filed by it on 11-07-2009 declaring total income of Rs. 990/-. The said return was initially processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter, referred to as the ‘Act’). The assessment, however, was subsequently re-opened by the AO and in the fresh assessment computed u/s. 147/143(3) of the Act by an order dt 28-02-2011, the income of the assessee was determined by him at Rs. 20,490/-. The said assessment made by the AO was subsequently set aside by the Ld. CIT vide his order dated 10-03-2014 passed u/s. 263 of the Act giving direction to the AO to make the assessment afresh. As per direction of the Ld. CIT given in the order passed u/s. 263 of the Act, the fresh assessment proceedings were initiated by the AO and since there was no compliance on the part of the assessee to the notices issued by him during the course of fresh assessment proceedings, the AO was left with no alternative but to complete the assessment to the best of his judgment on the basis of material available on record. In the assessment so completed u/s. 144/263/143(3)/147 of the

Act by an order dated 02-03-2015, the total income of the assessee was determined by the AO at Rs. 3,20,36,500/- after making addition of Rs. 3,20,00,000/- by treating the share application money including the share premium received by the assessee during the A.Y under consideration as unexplained cash credit u/s. 68 of the Act.

3. Against the order of the AO passed u/s. 144/263/143(3)/147 of the Act, an appeal was preferred by the assessee 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 for non-prosecution vide his appellate order dated 28-02-2018 passed *ex parte*. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before this Tribunal.

4. We have heard the arguments of both the parties and also perused the relevant records. 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 Ld. Counsel for the assessee has stated that applications were filed by the assessee in writing seeking adjournment of the hearing fixed by the Ld. CIT(A) on four (4) different dates and since the notice stated to be issued by the Ld. CIT(A) fixing the appeal of the assessee for final hearing on 27-02-2018 was never received by the assessee, the assessee could not comply with this said notice. He has also submitted that even the notices were sent by the AO during the course of assessment proceedings to the old address of the assessee and therefore, the assessee could not comply with the said notices. He has urged that the impugned order passed by the Ld. CIT(A) *ex parte* may be set aside and the matter may be restored to the file of the AO for making fresh assessment after giving the assessee proper and sufficient opportunity of being heard. The Ld. DR, on the other hand, has raised strong objection in this regard by pointing out the non-compliant attitude of the assessee during the assessment proceedings before the AO as well as during the course of appellate proceedings before the Ld. CIT(A). However, we consider it fair and proper and in the interest of justice to give one more opportunity to the assessee to put forth its case on merits before the AO on the issues involved in the appeal. Accordingly, we set aside the impugned order passed by the Ld. CIT(A) *ex parte* and restore the matter to the file of the AO for making fresh assessment on merits after giving the assessee proper and sufficient opportunity of being heard. The assessee is directed to make due compliance before the AO and to extend all possible co-operation in order to enable the AO to complete the assessment afresh expeditiously.

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

Order Pronounced in the Open Court on 5th October, 2020.

Sd/-
A.T. Varkey
Judicial Member

Sd/-
P.M. Jagtap
Vice President (KZ)

Dated 05-10-2020

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Fabline Engineers P.Ltd C/o Rajesh Mohan & Associates, Unit No. 18, 5th Fl., Bagati House, 34 Ganesh Chandra Avenue, Kolkata-13.
2. Respondent/Revenue: The ITO, Ward 5(3), Kolkata Aaykar Bhawan, 8th Fl., P-7 Chowringhee Sq., Kolkata-69.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

**PP/SPS True Copy By By Order

Assistant Registrar
ITAT Kolkata