

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 798/Del/2020 for A.Y. 2007-08

Brown Multi Wall Paper Bags Ltd. through its Resolution Professional, Flat No. B-2, First Floor, Silver Line, S. B. Marg, J. B. Nagar, Andheri (East), Mumbai - 400059	Vs.	ITO, Ward – 5(2), New Delhi
PAN-AAACP 2617 H		
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Sh. Sumit Nagpal, C.A.
Revenue by	Sh. Bhopal Singh, Sr. DR

Date of hearing:	19/11/2020
Date of Pronouncement:	23/11/2020

**ORDER**

**PER ANIL CHATURVEDI, AM:**

The present appeal filed by the assessee is directed against the order dated 28.08.2019 of the Commissioner of Income Tax (A)-2, New Delhi relating to Assessment Year 2007-08.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a company stated to be engaged in the business of manufacturing of paper based packaging products and retail shopping bags. Assessee filed its return of income for A.Y. 2007-08 on 31.10.2007 declaring loss. The case was selected for scrutiny and thereafter vide order dated 31.12.2009 passed u/s 144 of the Act, AO determined the total income at Rs 56,44,245/- Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 10.01.2011 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee carried the matter before ITAT. ITAT vide order dated 21.07.2016 (ITA No.1155/Del/2011) remanded the matter to AO and directed him to decide the issue afresh after granting opportunity of hearing to the assessee. Pursuant to the directions of ITAT, AO vide order dated 31.12.2017 determined the income at Rs.34,02,170/- by *inter alia* disallowing certain expenses, making certain addition on estimated basis and addition of certain creditors. Thereafter assessee filed application u/s 154 before AO for the claim of “unabsorbed depreciation”. In response to the assessee’s application for rectification u/s 154 of the Act, AO vide order dated 21.06.2018 recomputed the total income at Rs. Nil. AO however vide order dated 25.06.2018 levied penalty of Rs.11,45,170/- u/s 271(1)(c) of the Act on the aggregate additions of Rs. 34,02,170/- (addition on account of unconfirmed creditors,

trading addition and disallowance of expenses). Aggrieved by the penalty order passed by AO, assessee carried the matter before CIT(A) who vide order dated 28.08.2019 held that no penalty is leviable on the basis of estimated additions and where the income of the assessee is Nil but however directed the AO to verify the rectification order dated 21.06.2018 by which the income of the assessee was declared as Nil and zero taxability. CIT(A) thereafter in the order passed u/s 154/250 dated 19.11.2019 upheld the levy of penalty u/s 271(1)(c) of the Act by relying on the decision of Hon'ble Apex Court in the case of CIT Vs. Shree Chowtia Tubes (India) P. Ltd. 297 CTR 15 (SC). Aggrieved by the order of CIT(A) whereby the penalty has been confirmed, the assessee is now before us.

4. Before us. Ld AR submitted that the order of CIT(A) confirming the penalty is an ex parte order and no opportunity of hearing was granted by CIT(A) and therefore the order is void. In the alternate he submitted that the matter be remitted to CIT(A) so that assessee can present the case before CIT(A). Ld DR on the other hand supported the order of CIT(A).

5. We have heard the rival submissions and perused the material on record. The issue in the present appeal is with respect to upholding the levy of penalty u/s 271(1)(c) of the Act. We find that the CIT(A) has passed an ex parte order without hearing the

assessee. It is an established principle of natural justice that assessee should be heard before a decision is taken against it. A fair opportunity of hearing is essence of the principles of natural justice. Further an opportunity of hearing to the assessee before the levy of penalty is a statutory requirement, which has to be strictly complied with by the Revenue. In the present case since the order of CIT(A) has been passed in violation of principles of natural justice, we are of the view that one more opportunity needs to be granted to assessee to present its case. We therefore, restore the issue back to the file of CIT(A) and direct him to pass a fresh order after granting adequate opportunity of hearing to both the parties. **Thus the appeal of Assessee is allowed for statistical purposes.**

**6. In the result, the appeal of Assessee is allowed for statistical purposes.**

**Order pronounced in the open court on 23.11.2020**

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Priti Yadav, Sr.PS

**Sd/-**  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

*Date:- 23.11.2020*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI