

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No. 6116/Del/2019
Asstt. Year 2015-16

Shriramji Agencies Pvt. Ltd. C/O RRA TAXINDIA D-28, South Extn., Part-1, New Delhi – 110 049 PAN AATCS6766P	Vs.	DCIT, Circle -23(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Somil Agarwal, Advocate
Department by :	Shri Gaurav Dudeja, Sr. DR
Date of Hearing	10/02/2021
Date of pronouncement	10/02/2021

ORDER

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the ex parte order dated 14th June, 2019 of the Ld. CIT(A)-8 New Delhi relating to assessment year 2015-16.

2. The assessee in the grounds of appeal has challenged the order of the Ld. CIT(A) in confirming the penalty of Rs. 2,36,632/- levied by the AO u/s 271(1)(c) of the I.T. Act.

3. The facts of the case, in brief, are that the assessee is a company engaged in the business of trading in mobile phones. It filed its return of income on 30th September, 2015 declaring loss of Rs. 54,30,792/-. The AO completed the assessment u/s 143(3) of the I.T. Act on 20th December, 2017 determining the total loss at Rs. 45,68,580/- wherein he made addition of Rs. 96,407/- on account of disallowance of expenses and Rs.7,65,800/- on account of bogus purchases. The assessee did not file any appeal against the additions made by the AO. Subsequently the AO initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee and relying on various decisions, the AO levied penalty of Rs. 2,36,632/- being 100% of the tax sought to be evaded.

4. Since the assessee did not appear before the Ld. CIT(A) despite number of opportunities granted, Ld. CIT(A) in the ex parte order passed by him sustained the penalty levied by the AO.

4.1 Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. I have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that due to non appearance of the assessee before him, the Ld. CIT(A) in the ex parte order passed by him has sustained the penalty levied by the AO u/s 271(1)(c) of the I.T. Act. It is the submission of the Ld. Counsel for the assessee that due opportunity of hearing was not granted by the Ld. CIT(A). It is also his submission that the penalty notice issued by the AO does not specify the limb under which the penalty has been levied. Since the assessee did not appear before the Ld. CIT(A) for which the Ld. CIT(A) was constrained to pass the ex parte order, therefore, considering the totality of the facts of the case and in the interest of justice I deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Ld. CIT(A) without seeking any adjournment under any pretext failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. Grounds raised

by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court at the time of hearing itself i.e. on 10/02/2021.

sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 10/02/2021

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi