

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.8942/Del/2019
Assessment Year: 2011-12

ABL Softmines Technologies Pvt. Ltd.,
G-56, Green Park Main,
New Delhi. Vs. ITO,
Ward-1(1),
New Delhi.

PAN: AAICA4883A

(Appellant)

(Respondent)

Assessee by : Shri Rajeshwar Painuly, CA
Revenue by : Shri Om Prakash, Sr.DR
Date of Hearing : 09.11.2021
Date of Pronouncement : 09.11.2021

ORDER

This appeal filed by the assessee is directed against the ex parte order dated 6th September, 2019 of the CIT(A)-1, New Delhi, relating to Assessment Year 2011-12.

2. Although a number of grounds have been raised by the assessee, these all relate to the ex parte order of the CIT(A) in confirming an addition of Rs.27,69,077/- to the returned income of Rs.30,38,049/-.

3. Facts of the case, in brief, are that the assessee is a private limited company. Return of income in this case has not been filed by the assessee. Subsequently it came to notice through NMS software that the assessee company had deposited cash with Axis Bank and earned fees from professional/technical services during the F.Y.20110-11, relevant to A.Y. 2011-12 but no return of income was filed. Accordingly, proceeding u/s 148 were initiated after recoding the reasons for the same and taking approval from the competent authority. Thereafter, notice u/s 148 was issued on 30.03.2018. In response to notice the assessee filed income tax return on 16.04.2018, declaring current loss of Rs. 30,38,349/-. Subsequently assessment u/s 147 was completed on 15.11.2018 at assessed loss of Rs. 2,68,972/-. In the assessment order AO made an addition of Rs. 25,00,077/- u/s 68 of the IT Act on account of unexplained cash deposit, unexplained unsecured loan and unexplained share application money. Similarly, he made addition of Rs.2,69,000/- u/s 68 of the IT Act, 1961 on account of current liability and sundry creditor.

3.1 Since the assessee did not appear before the CIT(A) despite number of opportunities granted, the Id.CIT(A), relying upon the decision of the Honøble Madhya Pradesh Court in the case of Estate of Late Tukojirao Holkar vs. CWT (1997) 223 ITR 480 (MP), dismissed the appeal for non-prosecution.

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

5. The Id. Counsel for the assessee submitted that the Id.CIT(A) dismissed the appeal for non-appearance, but, has not decided the appeal on merit. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case before the CIT(A).

6. The Id. DR, on the other hand, heavily relied on the order of the CIT(A) and submitted that despite number of opportunities granted, the assessee did not appear before the CIT(A), therefore, heavy cost should be levied on the assessee.

7. I have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that despite number of opportunities granted by the CIT(A), the assessee did not appear before him for which he has dismissed the appeal for non-prosecution. However, I find, the Id.CIT(A) has not decided the appeal on merit which he is required to do as per the provisions of section 250(6) of the IT Act, according to which, the order of the CIT(A) disposing of the appeal shall be in writing and shall state the points of determination, the decision thereon and the reason for the decision. Since the Id.CIT(A), in the instant case, has not decided the appeal on merit, and simply dismissed for non-prosecution, 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 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 directed to appear before the CIT(A) and substantiate its case without seeking any adjournment

under any pretext failing which, the Id.CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. 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 09.11.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 09th November, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi