

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.697/Bang/2021
Assessment Year : 2010-11

M/s. Sree Rajendra Textiles, 385, 5 th Floor, RMV 2 nd Stage, 2 nd Block, 80 Feet Road, Sanjaynagar, Bengaluru – 560 094. PAN : AAEFS 9813 K	Vs.	DCIT, Circle – 5(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. V. Ravishankar, Advocate
Revenue by	:	Shri. Priyadarshini Mishra, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	27.04.2022
Date of Pronouncement	:	27.04.2022

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 31.01.2020 of CIT(A)-5, Bengaluru, relating to Assessment Year 2010-11.

2. There is no delay in filing this appeal because the impugned order of the CIT(A) was served on the assessee on 13.02.2020 and the assessee had time to file appeal before the Tribunal up to 12.04.2020. In view of Covid-19 pandemic and the order of the Hon'ble Supreme Court dated 27.04.2021 directing period of limitation for filing appeals to be extended and a further period of 90 days was also allowed from 03.10.2021 by the Hon'ble

Supreme Court. Therefore, the appeal filed by the assessee on 16.12.2021 is within time.

3. The assessee is a partnership firm engaged in the wholesale business of dealing imported local silks and yarns for Assessment Year 2010-11. The assessee filed return of income on 25.09.2010 declaring a total income of Rs.1,62,94,150/- and the return was processed under section 143(1) of the Act. Subsequently, the AO initiated proceedings under section 147 of the Act for issue of notice under section 148 of the Act on 31.03.2017. The AO finally passed an Order of Assessment dated 18.12.2017 under section 143(3) r.w.s. 147 of the Act, determining the total income of the assessee after making an addition of Rs.1,11,91,377/- on account of purchase of DEPB licences from M/s. Sai Fashions and M/s. Riddi Siddhi Silks, Ahmedabad. According to the AO enquiry conducted by the investigating team, Ahmedabad revealed that M/s. Riddi Siddhi Silks and M/s. Sai Fashions along with few other entities were created with a sole motive of providing accommodation entries which are bogus in nature.

4. Aggrieved by the order of the AO assessee filed appeal before the CIT(A). The CIT(A) decided the appeal ex-parte after making the following observations:

“The appeal for A.Y. 2010-11 was e-filed on 24.01.2018 against the order of DCIT-Circle-5(2)(1), Bengaluru, dated 18.12.2017, passed u/s. 143,(3) r.w.s. 147 of the 1.1 Act. It is seen from records that the notices for hearing were issued by this office on various dates 10.01.2020 and final notice dated 20.01.2020, and the Assessee has not made appropriate compliance to several notices issued from time to time, including to the said final notice duly sent at the address / generated or available on ITBA, Since the notices (including final notice) was issued through ITBA, on address available therein, it is also apparent that the requisite intimation

would have been received through e-mail, mentioned in the Form-35. Despite the ease of electronic communication, the persistence in non-compliance cannot be condoned. In the said final notice it was clearly specified that "In case of further non-compliance / non-response, by the said date, the case /appeal will be finalized, on the basis of materials available on record. The final notice contained a specific option for filing written submission online to which also no response in made. It is seen that. statement of facts and grounds of appeal are available on records, apparently e-filed by the appellant on 24.01.2018. In view of the long-pendency of the present appeal and apparent improbability of further compliance is the matter, it may be in best judicial / administrative interest to dispose the appeal on basis of materials available on records. Based on the statement of facts & grounds of appeal and AO's observations / explanation contained in the assessment order, the present case is finalized, as hereunder."

5. The CIT(A) thereafter confirmed the order of the AO. Aggrieved by the order of the CIT(A), assessee is in appeal before the Tribunal.

6. It is the plea of the assessee in ground Nos.1 and 2 that the CIT(A) did not afford opportunity of being heard to the assessee. In this regard, it is seen from the order of the CIT(A) that there has been only an electronic mode of service of notice. The learned Counsel for the assessee has denied receipt of any such communication. There is nothing to indicate service of notice stated to have been sent by the office of the CIT(A). In the given facts and circumstances of the case, the parties agreed that the impugned order of the CIT(A) should be set aside and the matter remanded to the CIT(A) for a decision afresh after affording assessee opportunity of being heard. Accordingly, the order of the CIT(A) is set aside and the issue raised by the assessee in the grounds of appeal before the CIT(A) is directed to be adjudicated afresh by the CIT(A) after affording the assessee opportunity of being heard.

7. The appeal is accordingly treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(S. PADMAVATHY)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
Vice President

Bangalore,
Dated: 28.04.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.