

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1738/Mum/2020

(A.Y: 2003-04)

M/s Silverline Industries Ltd.,Unit No. 121, SDF IV SEEPZ Andheri (E), Mumbai – 400096.	Vs.	ITO – 3(3)(2) Mumbai – 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS7365M		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Suresh Periasamy.DR

Date of Hearing	13.10.2022
Date of Pronouncement	17.10.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-18, Mumbai passed u/s 271(1)(C) and 250 of the Act. The assessee has raised grounds of appeal challenging the levy of penalty u/sec 271(1)(C) of the Act.

2. On perusal of the facts, the appeal was filed by the assessee on 17-08-2020 and the case was posted for hearing on 15-09-21,2-11-2021,14-12-2021,13-01-

2022,07-04-2022,06-06-2022,07-06-2022 and today i.e 13.10.2022, none appeared on dates of hearing nor any application was filed for adjournment. On considering the facts and the action of the assessee in non appearance on dates of hearing. The presumption is that after filling the appeal, the assessee is not inclined /interested to prosecute the appeal. Accordingly, we heard the Ld. DR submissions and considered the material information available on record.

3. The brief facts of the case are that the assessee company is engaged in the business of computer software development and export local sales of software including services and Hi-tech training. The assessee has filed the return of income for the A.Y 2003-04 on 30.11.2003 disclosing the total loss of Rs. 24,43,32,950/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act was issued. Since there was no compliance by the assessee in spite of providing ample opportunities of hearing, the AO has no other option except to deal with the assessment based on the

information available on record and applied the provisions of Sec. 144 of the Act. The AO on perusal of the financial statements observed that the assessee has claimed depreciation on fixed assets and there was no supporting evidences filed in respect of purchase of the Asset and therefore the AO has disallowed the depreciation. Further the AO found that the assessee has debited the expenditure in the profit and loss account under operating and establishment expenses and the assessee has failed to produce the details or information with supporting evidences. The assessee also has failed to produce the books of Accounts and the A.O. has estimated the net profit considering the total receipts and estimated the ad-hoc profit @ 29.30% of total receipts and made addition of Rs.15,81,60,360/- and made addition of depreciation on staff residential premises of Rs. 1,44,98,091/- and assessed the total income of Rs. 17,26,58,450/- and passed the order u/s 144 of the Act dated 27.03.2006.

4. Subsequently, the A.O. has initiated the penalty proceedings u/s 271(1)(c) of the Act. In the penalty proceedings, the A.O. relied on the findings of the scrutiny proceedings and issued notice. Whereas the

assessee has filed the explanations on 25-03-2015 referred at Para 10 of the penalty order. But the A.O. was not satisfied with the explanations and observed that the assessee has failed to substantiate the genuineness of the claim and the penalty is levied for furnishing inaccurate particulars of income and concealment of particulars of income and passed the order u/s 271(1)(c) of the Act dated 28.06.2018

5. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A), where as the CIT(A) has considered the grounds of appeal, submissions and findings of the scrutiny assessee and issued notice of hearing and the CIT(A) considering the material on the file has confirmed the penalty and dismissed the assessee appeal and passed ex parte order. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Hon'ble Tribunal. At the time of hearing none appeared on behalf of the assessee and the Ld.DR relied on the order of the CIT(A).

6. We heard the Ld. DR submissions and perused the material on record. The assessee has challenged in the grounds of appeal that the CIT(A) has over looked the

information of the assessee and confirmed the levy of penalty. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. We find the Ld.CIT(A) has issued the notices of hearing referred in the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. We find that the assessee has raised grounds of appeal challenging the penalty levied by the assessing officer and there could be various reasons for non appearance which cannot be overruled. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case before the CIT(A) along with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh on merits and the

assessee should cooperate in submitting the information for early disposal of the appeal and allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 17.10.2022

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 17.10.2022
KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai