

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA.No.3362/Del./2018
Assessment Year 2006-2007

M/s. Excel Infracon Private Ltd., 502, D-Mall, Netaji Subhash Palace, Pitampura, Delhi – 110 034. PAN AABCE5510B	vs.	The DCIT, Central Circle, Sector-12, Karnal. Haryana State.
(Appellant)		(Respondent)
For Assessee :		-None-
For Revenue :		Ms. Nidhi Srivastava, CIT-DR
Date of Hearing :		19.07.2021
Date of Pronouncement :		19.07.2021

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the Order dated 28.02.2018 of the Ld. CIT(A)-3, Gurgaon, relevant to the A.Y. 2006-2007.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the ex-parte

order of the Ld. CIT(A) in confirming the penalty of Rs.1,17,81,000/- levied by the A.O. under section 271(1)(c) of the I.T. Act, 1961.

3. Despite service of notice, none appeared on behalf of the assessee. Therefore, this appeal is being decided on the basis of the material available on record and after hearing the Ld. D.R.

4. The facts, in brief, are that a search under section 132(1)(A) of the I.T. Act was carried-on at the business as well as residential premises of M/s. Best Food Group of Cases, Karnal on 23.11.2010. In response to notice under section 153A of the I.T. Act, the assessee filed a letter dated 17.09.2012 stating therein that the return filed by it on 30.03.2007 be treated as return filed in response to notice under section 153A of the I.T. Act. The A.O. on the basis of various submissions filed by the assessee from time to time, completed the assessment under section 153A(1)(b) of the I.T. Act, 1961, determining the total income of the assessee at Rs.3,50,00,000/- wherein he made addition of the said amount under section

68 of the I.T. Act, 1961, as unexplained share capital and share premium.

5. In appeal, the Ld. CIT(A) confirmed the addition made by the A.O. Subsequently, the A.O. initiated penalty proceedings under section 271(1)(c) of the I.T. Act rejecting the various explanations given by the assessee. The A.O. levied the penalty of Rs.1,17,81,000/- being 100% of the tax sought to be evaded. Since the assessee did not appear before the Ld. CIT(A), the Ld. CIT(A) passed the ex-parte Order, in the absence of any submissions filed by the assessee during the entire appellate proceedings.

6. We have heard the Ld. D.R. and perused the record. The A.O. in the instant case has levied the penalty of Rs.1,17,81,000/- under section under section 271(1)(c) of the I.T. Act, 1961 on account of addition of Rs.3,50,00,000/- under section 68 of the I.T. Act, 1961. We find the Ld. CIT(A) upheld the penalty levied by the A.O. in the absence of any details filed by the assessee during the entire appellate proceedings except letter of adjournment on 18.08.2017. A perusal of the order of the Ld. CIT(A) shows

that he had given 04 opportunities to the assessee and the assessee had sought adjournments on one occasion, but, did not appear on the other dates for which the Ld. CIT(A) was constrained to pass the ex-parte order wherein he has confirmed the penalty so levied by the A.O. Considering the totality of the facts and circumstances of the case and in the interest of justice, we 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 claim and decide the issue as per fact and Law. The assessee is also hereby directed to appear before the Ld. CIT(A) and substantiate its case without seeking any adjournment under any pretext, failing which, the Ld. CIT(A) is at liberty to pass appropriate order as per Law. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court at the time of hearing itself i.e., on 19.07.2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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

Delhi, Dated 19th July, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.