

आयकर अपीलिय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri J. Sudhakar Reddy, AM and Shri A. T. Varkey, JM]

ITA No. 300/Kol/2020
Assessment Year: 2013-14

M/s. AP Garments (P) Ltd. PAN: AAHCA2018E	Vs.	D.C.I.T Cir-10(1)
Appellant		Respondent

Date of Hearing	07.07.2020
Date of Pronouncement	10 .07.2020
For the Appellant	None appeared
For the Respondent	ShriJayantaKhanra, JCIT, ld. Sr.DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-4, Kolkata dated 31-10-2019 for the assessment year 2013-14.

2. None appeared for the assessee. However, a perusal of the grounds of appeal (ground nos. 1 and 2) reveal as under:-

“1. For that on the facts and in the circumstances of the case, the CIT(A) was grossly unjustified in dismissing the appeal without giving the appellant proper opportunity of being heard.

2. For that on the facts and in the circumstances of the case, the CIT(A) not having properly served the notice of hearing on the appellant ought not to have dismissed the appeal for the alleged non-compliance and in that view of the matter the order passed by the CIT(A) deserves to be set aside.”

3. From a perusal of the aforesaid two (2) grounds, it is discerned that the assessee is aggrieved by the *ex parte* order passed by the ld. CIT(A) without serving notice of hearing to the appellant assessee. It is noted that the ld. CIT(A) has fixed the cases thrice for hearing i.e. 22.08.2019, 27.09.2019 and 30.10.2019. According to the ld. CIT(A) notices of hearing have been sent through **speed post** as well as by e-mail address given by the assessee in the appeal memo and the notices have not come back **unserved**. Thereafter, the ld. CIT(A) has referred to few Hon’ble High Court’s decisions and observed that appeal

does not mean merely filing of appeal, but effectively pursuing it is necessary and, thereafter, the ld. CIT(A) has dismissed the appeal by observing as under:-

4. In this case above mentioned three opportunities were given to the assessee to represent its case. However, the assessee did not avail any of the opportunities. I have perused the' Assessment Order, Statement of Facts and Grounds of appeal. It is seen from the Assessment order that the AO has added Rs. 3,01,27,680/- u/s. 69C of the Income Tax Act, 1961. During the course of appellate proceedings the assessee did not appear nor had he filed any written submission on online basis. In these circumstances, I find no reason to deviate from the Assessment Order and same is hereby confirmed. "

4. Aggrieved, the assessee his filed this appeal before this tribunal by raising aforesaid two grounds of appeal as well as two grounds of appeal challenging the merits of the addition. It is noted that the assessee has raised following grounds of appeal before the ld. CIT(A) along with detailed statement of facts running to five pages:

GROUND OF APPEAL

1) For that on the facts and in the circumstances of the case, "the AO was unjustified in law in initiating reassessment proceedings u/s .147 of the Act upon mere change of opinion & without properly being satisfied that the appellant's income had escaped assessment.

2) For that on the facts and in the circumstances of the case, the order u/ s 147 / 143(3) be cancelled as reassessment proceedings were initiated without complying with the conditions precedent.

3) For that on the facts and in the circumstances of the case, the AO was grossly unjustified in law in making disallowance of Rs.3,01,,27,680/- by invoking provisions. of Sec. 69C as unexplained expenditure even though provisions of the said Section had no application to the appellant on the facts and circumstances of its case.

4) For that on the facts and in the circumstances of the case, the addition of Rs.3,01,27,680/- made u/s 69C be deleted.

5) For that the appellant craves leave to me additional grounds and/ or amend or alter the grounds already taken either before or at the time of hearing of the appeal.

5. However, the Id. CIT(A) has preferred not to discuss any factual issues or law regarding the challenge raised by the assessee in respect of the addition made by the AO. We note that the impugned order of the Id. CIT(A) is an *ex parte* and the Id. CIT(A) has passed the impugned order without considering the grounds of appeal raised before him. It has to be kept in mind that if the assessee is aggrieved by the order of the AO, assessee has the right to file an appeal before the Id. CIT(A), who is the First Appellate Authority. This right of the assessee is a statutory/vested right and the appeal so preferred by the assessee will become meaningless, if the First Appellate Authority i.e. the Id. CIT(A) does not adjudicate the grounds raised by the assessee on merits. Since in this case, the assessee did not bother to appear before him, resulted in dismissal of the appeal *ex parte* by the Id. CIT(A). It is observed that the Id. CIT(A) has remarked that he has gone through the assessment order, statement of facts as well as grounds of appeal and has seen from the assessment order that the AO has added an amount of Rs. 301,27,680/- u/s. 69C of the Income-tax Act, 1961 (in short, referred to as the 'Act'). During the course of appellate proceedings it was mentioned by the Id. CIT(A) that the assessee did not appear nor it had filed any written submissions on online basis. Therefore the Id. CIT(A) found no reason to deviate the assessment order and, therefore, he confirmed it. It has to be kept in mind that the reason "*is the soul of an appellate order/quasi-judicial order*". It is noted that in the statement of facts filed before the Id. CIT(A), the assessee has given detailed statement of facts while challenging the action of the AO, which has not been touched upon by the Id. CIT(A) in his order and has not passed a reasoned or speaking order in respect of grounds of appeal raised by the assessee. However, we are of the opinion that without hearing the assessee, the Id. CIT(A) ought not to have passed the impugned order. Even if he wanted to pass the order since none appeared on behalf of assessee despite service of notice, he should have called for the assessment records and thereafter, passed the order on merits, which the Id. CIT(A) has not done.

6. We are also of the opinion that assessee needs to be vigilant and by merely filing the appeal, the assessee cannot expect the First Appellate Authority (Id. CIT-A) to decide the grounds raised without any supporting materials/documents and written submissions. We note that the Id. CIT(A) has noted that appeal was posted for hearing on thrice **i.e22-08-**

2019, 27-09-2019 and 30-10-2019 and finding that none appeared on behalf of assessee, he dismissed the appeal. Though the Id. CIT(A) has observed that notices were, in fact, sent by speed post and it was not returned back un-served, however the assessee's ground no. 2 reveals that notices have not been served upon the assessee and that assessee did not get proper opportunity to present its case before the Id. CIT(A). Be that as it may be, however, assessee is also expected to be vigilant and should pursue its appeal earnestly and diligently. We expect that after getting this order of the Tribunal, the assessee would file the correct postal address as well as correct *e-mail id* before the Id. CIT(A) if there is any change and, thereafter, pursue the appeal diligently by filing written submissions as well as documents, if so advised, in support of the claim and be present either through its directors or through Id.AR and explain the facts and law in support of the grounds raised by the assessee. We expect the assessee to be diligent while pursuing the appeal. In the light of above discussion, the impugned order of the Id. CIT(A) is set aside and the appeal is restored back to him with a direction to adjudicate the grounds of appeal on merits after hearing the assessee/going through the submissions/documents and to pass a speaking order in accordance to law.

7. In the result, the appeal of assessee is allowed for statistical purpose.

Order is pronounced in the open court on 10 July 2020.

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(Aby. T. Varkey)
JudicialMember

Dated : 10 July 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –M/s. AP Garments Pvt. Ltd 33 Circular Road, Tollygunge, Kolkata-53.
2. Respondent –DCIT, Cir-10(1), AaykarBhavan, P-7 Chowringhee Sq., Kolkata-69.
3. CIT(A)-4, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)
By order,

/True Copy,

Assistant Registrar