

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH 'SMC' "I (2)", NEW DELHI ]**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1311/Del/2019  
Assessment Year: 2013-14

B. M. Sarin, HUF, Prop. Chunnu Fashions, M-4, Green Park Main, New Delhi - 110 016. <b>PAN : AACHC6467R</b>	Vs	ACIT, Circle : 32 (1) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Revenue by	Shri Pradeep Singh Gautam, Sr. D. R.;
Assessee by	Shri Umeed Singh, A. R.;

Date of hearing:	<b>03/03/2020</b>
Date of Pronouncement:	<b>19/05 /2020</b>

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. This appeal is filed by the assessee against the order of the Id CIT(A)-11, New Delhi dated 10.09.2018 for AY 2013-14.
2. The assessee has raised the following grounds of appeal:-
  1. *The order is bad in law, arbitrary and is not enforceable under the law.*
  2. *The AO has passed the order ignoring facts and figures of the case and has not followed the procedures of the Income Tax Act.*
  3. *Non-attendance: The notices issued to the assessee for appearance/hearing by the Ld. CIT(A) were sent at e-mail "chunnu21\_9@yahoo.com which did not reach to the assessee as the*

assessee is senior citizen. The assessee is not computer literate and he has no business and no staff as the business was closed five years ago due to heavy losses .

4. *Reasons of losses in the Business : Mr. B. M Sarin, Karta of the HUF is senior citizen aged more than 70 years. He has been in the business of export of readymade garments. In the year 2008-09 business of the assessee suffered heavy losses due to sub-prime cases in the U.S. and general slump in the market and the lender of assessee Indian Bank classified assessee's Account as NPA and started recovery proceedings against the assessee. Since then the firm is regularly suffering losses every year and now there is no business for the past 4-5 years. The factory premises are closed due to recovery proceedings by the bank. Karta and his wife are senior citizens running in their late sixties and ailing. Assessee is facing acute shortage of funds and finding it difficult to pay legal fee also. Even knowing that the counsel did not attend the case, assessee still preferred to the same counsel for further appeal before the ITAT. Assessee's counsel neither attended the hearing before the Ld. CIT(A) nor informed the assessee. Consequently, Ld. CIT(A) passed an ex parte order. As the negligence or inaction was on the part of the tax consultant and there is no malafide imputable to the assessee, the non-attendance may be condoned.*
5. *Disallowance of Depreciation of Rs. 59,41,974/- : The assessee is an HUF and was carrying on the business of manufacturing, exports and job work of readymade garments during the year under consideration. The assessee has claimed depreciation and other expenses in the Profit and Loss Account during the year. The assessee has been availing various credit facilities from Indian Bank and the assessee due to slow down in business had defaulted in repayment of loan to the Indian Bank, the lenders to business. Consequently, the bank has taken symbolic possession of the factory of the assessee at Plot No. 23, Sector-4, Manesar, Gurgaon and not actual possession. The Ld A.O. has disallowed the depreciation alleging that the Assessee not being owner of the business premises but the lender bank.*

*It may be noted that the bank had taken various measures to recover the defaulted amount and symbolic possession was one of the measures but actual possession was with the assessee and use of the assets were with the assessee who was carrying out its business activities. Even though the assets of the assessee were in symbolic possession of the bank, the right to such option did not affect the ownership of the assessee and the assessee was, accordingly entitled to depreciation. The Ld AO has failed to appreciate the factual as well as legal position that the assessee was entitled for depreciation claimed by it on all the assets.*

6. *Disallowance of Conveyance, Telephone Expenses and Staff Welfare of Rs. 23.180/-*

*The assessee produced all the books of accounts and bills and vouchers during assessment proceeding which were duly verified by the Ld. AO. The Ld. A.O. has made the disallowance of various expenses on adhoc basis without pinpointing any defect related to specific expenses from the books of account. No instance has been brought on record by the AO to substantiate that some part of the expenses have actually been incurred for non-business purposes. In view of this, adhoc additions made by the AO may be deleted.*

7. *The Ld AO has erred in law by initiating penalty proceedings u/s 271 on account of additions made to the assessee's income.*
8. *That the appellant craves to add, amend, alter and/or withdraw any ground of appeal till and during the course of hearing. “*

3. The first issue is regarding non attendance before the ld CIT(A) and other two on the merits of the issues.
4. The appeal filed before us is delayed by 125 days. The assessee received the order of the ld CIT(A) on 15.09.2018, however, the appeal was filed on 18.12.2019. The assessee preferred request for condonation of delay stating that when the order of the ld CIT(A) was received, the same was given to the tax consultant for filing an appeal before the ITAT, however he did not file any appeal and left work of the Assessee. The assessee also submitted an affidavit for the same. It was further stated that assessee came to know about the delay in filing of appeal only when recovery notices were issued. Therefore, it was prayed that the delay may be condoned.
5. The ld DR vehemently objected and submitted that the delay cannot be condoned as there is no sufficient reason for filing of delayed appeal.
6. We have carefully considered the rival contentions and found that the assessee does not get any benefit by filing of appeal belatedly. The assessee has given the order of the ld CIT(A) for filing of appeal to the ld AR who did not file the appeal, but also parted ways with the assessee. In fact the assessee did not derive any benefit by late filing of appeal. The facts of the case discussed later on will also support our view regarding

condonation of delay. In view of this, we condone the delay in filing of the appeal.

7. We have heard ld. AR and DR on the issue of dismissal of appeal by the ld. CIT (Appeals) not on merits of the case, but for non-prosecution by assessee. Ld. AR explained the facts of business, status of assessee, surrounding circumstances for non-appearance by assessee.
8. We have heard the rival parties and found that the ld CIT(A) has sent three notices to the assessee through e-mail but same were not complied with and therefore the appeal of the assessee was dismissed for non prosecution. The assessee submitted that the assessee is an HUF where Karta is the proprietor of M/s. Chunnu Fashions. In fact, it is BM Sarin HUF who is the assessee. The ld AO has passed an order in the name of M/s. Chunnu Fashions, the ld CIT(Appeals), in the statement of facts before him it is categorically stated that the assessee is an HUF, he also passed an order in the name of Chunnu Fashion. Even appeal before us is also filed in the name of Chunnu Fashions. In the total proceedings, the assessment order has never been framed on the correct persons i.e. BM Sarin HUF, but has been passed in the name of Chunnu Fashions. The Karta of the HUF, Mr. BM Sarin is more than 70 years old and has closed his business. The notices were sent through emails but the assessee being a senior citizen could not look into those emails. He is not a computer literate and has no business as the business of the assessee was closed 5 years ago due to heavy losses. Therefore, there is a genuine reason for not appearing before the ld CIT(A). It is also alarming that the assessment orders have been passed on non-existent party i.e. M/s. Chunnu Fashions which does not exists at all. In fact the assessment order and the appellate orders should have been in the name of BM Sarin HUF. This fact also deserves to be looked into. As before us also, appeal is filed in the name of M/s Chunnu Fashions incorrectly. We are correcting the title of appeal in the name of [B.M. Sarin, HUF]. Therefore, we set aside the order of the ld CIT(A) and sent it back for re-examination of the total facts by giving

opportunity to the Assessee for hearing as the issue have not been decided on the merits of the case. The assessee is permitted to raise all issues before him.

9. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on : **19/05/2020**.

**-Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Date : **19/05/2020**.

\*AK Keot\*

Copy forwarded to:

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI