

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 2846/DEL/2023  
Assessment Year: 2016-17**

Global Green Company Ltd., 447, 4 <sup>th</sup> Floor, Sri Sai Heights, 17 <sup>th</sup> main, 17 <sup>th</sup> Cross Sector 4, HSR Layout, Bengaluru-560102. PAN-AAACR0635H	<u>Vs</u>	ACIT, Circle 10(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Sh. Salil Kapoor, Adv.; Ms. Ananya Kapoor, Adv.; & Sh. Utkarsa Kumar Gupta, Adv.	
<b>Department represented by</b>	Sh. T James Singson, CIT(DR)	
<b>Date of hearing</b>	18.01.2024	
<b>Date of pronouncement</b>	25.01.2024	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 02.06.2023, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

“1. *GROUND OF APPEAL:*

*At the outset, the Company prays that the order dated June 02, 2023 under section 250 of the Act, by Learned National Faceless Appeal Centre ('Ld. NFAC') upholding the orders dated December 22, 2018 under section 143(3) of the Act and allied rectification orders dated 01 September 2022 and 11 October 2022 under section 154 of the Act read with section 143(3) of the Act passed by Learned Assessing Officer (Ld. AO), be struck down as invalid, null and void ab initio as the order is bad in law and on facts.*

*The grounds stated hereunder are independent of and without prejudice to one another.*

#### **GROUND I: DISMISSAL OF APPEAL BY THE Ld. NFAC**

*1.1. The Ld. NFAC erred in dismissing the appeal of the Appellant under the Idiom 'vigilantibus non dormientibus, jura subveniunt', despite the detailed submissions and allied representations made before Ld. Commissioner of Income tax- Appeals [(CIT (A)]. Hence, the order passed by Ld. NFAC under section 250 of the Act shall be quashed to its entirety.*

*1.2. Despite the receipt of detailed submissions on various occasions, and additional evidence under Rule 46A of the Income tax rules by Ld. CIT(A), the Ld. NFAC is not correct in stating that the Appellant has neither filed written submissions nor filed for an adjournment. Hence, Ld. NFAC has passed the order by ignoring the detailed submissions/documents of the Assessee shall be quashed to its entirety.*

*1.3. The Ld. NFAC erred in stating that the Appellant is not vigilant in getting its appeal adjudicated despite filing submissions on various occasions, filed additional evidence on which the Ld. CIT(A) has sought a remand report from Ld. AO etc. Hence, the order passed by Ld. NFAC without verifying the facts and submissions of the Appellant is ought to be quashed.*

*1.4. The Ld. NFAC erred in resorting to Judicial precedents in dismissing the appeal even though Ld. CIT(A) has called for a remand report from Ld. AO with respect to the additional evidence furnished by the Appellant. Hence, the additions to the total income upheld by Ld. NFAC is clearly an act of denial of natural justice enshrined in Article 21 read with Article 14 of the Constitution of India. Hence, the additions upheld by Ld. NFAC is to be deleted in its entirety.*

**GROUND II: DISALLOWANCE OF INTEREST PAID AMOUNTING TO Rs 15,62,28,928 UNDER SECTION 36(1)(iii) OF THE ACT**

2.1. *The Ld. NFAC erred in upholding the action of Learned AO in disallowing the Interest of Rs 15,62,28,928 (out of total Interest and Finance cost of Rs 17,35,87,698) under the pretext that the borrowed funds were used for investment made in subsidiary companies despite the investments in its subsidiaries were made out of Appellant's non-interest-bearing funds; by way of share capital, reserves etc.*

2.2. *Without prejudice to the above, the Ld. NFAC erred in upholding the Ld. AO 's disallowance of interest under section 36(1)(iii) of the Act by disregarding the fact that the investments have been made from the perspective of "commercial expediency" and the same was accepted in Appellant 's own case in AY 2010-11 and AY 2011-12 by Ld. CIT(A), Delhi-4. Hence, the disallowance made by Ld. AO ought to be deleted by following the principle of judicial consistency as the facts of the current case are same as the facts of AY 2010-11 and AY 2011-12*

2.3. *The Ld. NFAC erred in upholding the Ld. AO order, wherein the Ld. AO has ignored the purpose of borrowings of the company and failed to understand whether the financial institutions granted the said loans to the Appellant allows to make the investment in overseas. Also, the Ld. AO and Ld. NFAC failed to understand that the loan granted was for a short period of time and the said loan was purely for working capital purposes.*

2.4. *The Ld. NFAC erred in upholding the stereotyped order passed by Ld. AO, wherein, the Ld. AO passed the order under section 143(3) of the Act by ignoring the detailed facts and submissions and merely relied on the order passed by his predecessors/his office for preceding previous years. Hence, the disallowances made by ignoring the facts and submissions of the present case shall be deleted to its entirety.*

2.5. *The Ld. NFAC erred in upholding the action of Ld. AO wherein, the Ld. AO failed to understand that the Appellant's investments were made for marketing /improving the Appellants own product line and is purely for the purposes of business as enshrined in section 36(1)(iii) of the Act. Hence, the disallowance made in this regard is ought to be deleted in its entirety.*

2.6. *Without prejudice to the above, the Ld. NFAC erred in upholding the action of Ld. AO in disallowing other expenditures namely Bank charges, LC charges etc, under the pretext that the entire borrowings were for*

*investment purposes. Hence, the other expenditures herein mentioned above shall be excluded from the disallowance of interest under section 36(1)(iii) of the Act.*

*2.7. The Ld. NFAC erred in upholding the Ld. AO's action of ignoring the Appellant submissions and judicial precedents set in various Income tax forums including Hon'ble Supreme Court of India and Hon'ble High Courts in this regard.*

*2.8. The Ld. NFAC has not only ignored the detailed submissions made and also upheld the disallowances made by Ld. AO basis his own surmises and conjectures. Hence, the dis-allowance made by Ld. AO and the order passed by Ld. NAFC shall be deleted in its entirety.*

*2.9. Without prejudice to the above, assuming the surmises and conjectures of the Ld. AO to be true, the disallowance of interest on the said loans under section 36(1)(iii) of the Act shall be restricted till the date of repayment of said loans granted by the banks/ Financial Institutions.*

*2.10. Without prejudice to the above, the disallowance of interest shall be restricted to Rs.4,57,98,367 as declared by the Appellant under Rule 46A of the Income tax Rules, 1962.*

*2.11. Without prejudice to the above, assuming the surmises and conjectures of Ld. AO to be true, the disallowance of interest on the said loans under section 36(1)(iii) of the Act shall be restricted to Rs 8,36,90,326 (i.e., 90% of total interest paid).*

**GROUND III: ADDITIONS ON ACCOUNT OF PROVISIONS WRITTEN-OFF AMOUNTING TO RS 8,27,33,191/-**

*3.1 Despite non perusing the submissions made before the Ld. AO and the Ld. CIT(A) the Ld. NFAC erred in confirming the approach of Ld. AO in not considering the write-off of Rs 8,27,33,191 pertaining to the following -*

*(a) Write off of doubtful Trade receivables Rs 1,44,98,922*

*(b) Write off of Provision for doubtful Loans & Advances Rs 5,53,96,079 (Rs 3,38,67,995+ Rs 2,15,28,084).*

*(c) Write-off of provision for non-saleable and damaged stock Rs 1, 28 ,38,190(Rs. 70,38,190+ Rs 58,00,000)*

3.2 *The Ld NFAC erred in upholding the action of Ld. AO in not allowing the claim towards write-off of trade receivables of Rs 1,44,98,922 by ignoring the fact that such bad debt is a business loss/expenditure and the same has been debited to the Profit & Loss account (P&L) as appearing in Note 2.21 "Other expenses" of the P&L Account of FY 2015-16 (AY 2016-17).*

3.3 *The Ld. NFAC erred in upholding the Ld. AO's order as the Ld. AO failed to understand the basic facets of the industry in which the Appellant being operated in, the products and allied stakeholders. Hence, the Ld. AO disallowing the write offs/provisions without understanding the business of the Appellant is ought to be deleted in its entirety.*

3.4 *The Ld NFAC erred in the upholding the Ld. AO's order, wherein, the Ld AO erred in disallowing the write-off of Loans & Advances of Rs 5,53,96,079 [Rs 2,15,28,084 (substantial part of the provision is with respect to supply of seeds, fertilizers and Pesticides to farmers) + Rs 3,38,67,995] being in the nature of business loss under section 28 read with section 37 of the Income tax Act 1961, particularly when the advances are linked to export of agricultural products. The Ld AO has also failed to see the same being debited to the P&L account as appearing in Note 2.21 "Other expenses". Hence, the disallowances made basis his own surmises and non-cognizance of the submissions filed shall be deleted to its entirety.*

3.5 *The Ld NFAC erred in upholding the Ld. AO's order, wherein, the Ld AO erred in disallowing the appellant's claim in respect of write-off of non-saleable and damaged goods amounting to Rs 1,28,38,190 (Rs 70,38,119 + Rs. 58,00,000 ) being in the nature of business and trading loss under section 28 of the Act, incurred in the course of carrying out the ordinary course of business and linked to the operation of export business. Further, the Ld. AO and Ld. NFAC failed to understand the fact that the aforementioned write off was made owing to its perishable in nature, and the said write off can be clearly seen in Note 2.21 "Other expenses of the P&L account of the said AY. Hence, the disallowances made basis his own surmises and non-cognizance of the submissions filed shall be deleted to its entirety.*

3.6 *Without prejudice to the above, the Ld. NFAC erred in upholding the action of Ld, AO, wherein, the Ld. AO erred in presuming that the amount of Rs. 8,27,33,191 is not ascertained on scientific basis and accordingly disallowed the provisions/write offs of Rs 8,27,33,191/- under the pretext*

*that the same is contingent and unascertained, hence, the disallowance made by the Ld. AO basis his own surmises and conjectures shall be deleted to its entirety*

*3.7 Basis the surmises and conjectures of Ld. AO and non-cognizance of the submissions filed, the Ld. AO erred in stating that the Assessee has attempted to do tax evasion by filing revised return EEN Bangalore of income with certain deductions as the same was not made in the return of Income. In this regard, the Ld. AO had erred in grossly ignoring the scientific and pragmatic reasons for write offs/provisions furnished by the Appellant for AY 2016-17. Hence, the disallowance made by Ld. AO basis his erroneous understanding of the matter and allied assumptions are not valid in law.*

*3.8 The Ld. AO failed to understand the act of disallowance of Rs 8,27,33,191 in the original return of income was a matter of abundant precaution, however, in the revised return of Income (filed on this amount (Rs 8,27,33,191) was claimed on perusal of certain judicial precedents and on attaining clarity. Hence, the disallowance of Rs 8,27,33,191 made by the Ld. AO basis his surmises and conjectures and his failure in understanding the business of the Appellant, shall be deleted to its entirety.*

*3.9 The Ld. NFAC erred in upholding the Ld. AO's action in ignoring the Appellant submissions and judicial precedents set in various Income tax forums in this regard.*

**GROUND IV: ADDITION UNDER SECTION 79 AMOUNTING TO RS 5,93,38,407/-**

*4.1. The Ld. NFAC erred in upholding the Ld. AO's order, wherein, the Ld.AO erred in invoking the provisions of Section 79 of the Act despite there was no change in beneficial voting power of the Appellant for AY 2016-17, hence, the disallowance made by Ld. AO basis his erroneous interpretation of section 79 of the Act shall be deleted to its entirety.*

*4.2. The Ld. NFAC erred in upholding the Ld. AO's order, wherein, the Ld.AO disregarded the judicial discipline with respect to this matter as the Ld. AO resorted to lower forums when the Hon'ble High Court of Karnataka in case of [2015] 62 taxmann.com 350 (Karnataka)- Amco Power systems Limited versus CIT, has given its decision on this matter which is favorable to the Assessee. Also, the Ld. AO without providing any cogent reasons has disregarded the aforesaid Jurisdictional ruling and passed an order basis*

*certain Hon'ble Income tax Appellate forums which were pronounced much before the supra Hon'ble Court's Jurisdictional order. Hence, the order passed by Ld A.O and Ld. NFAC are not valid in law and accordingly the disallowance made in this regard is ought to be deleted to its entirety.*

*4.3. The Ld. NFAC erred in upholding Ld. AO's order as Ld. AO failed to understand the facts of the Appellant and disregarded the detailed submissions and accordingly passed an order basis his erroneous interpretation of the law. Hence, the order passed by Ld. AO basis his own surmises and conjectures, shall be deleted in its entirety.*

*4.4. Without prejudice to the above, the Ld. NFAC erred in upholding the Ld. AO's order, wherein, the Ld.AO failed to understand the fact that the said change in shareholding in AY 2016-17 did not change the threshold limit of voting power of the beneficiary as envisaged in section 79 of the Act. Hence, the disallowance of losses made under section 79 of the Act shall be deleted to its entirety.*

*4.5. The Ld. NFAC erred in upholding the Ld. AO's action in ignoring the Appellant submissions and judicial precedents set in various Income tax forums in this regard.*

#### **GROUND V: GENERAL**

*5.1 That the Order of Ld NFAC confirming the additions made by the Ld A.O is otherwise bad in law.*

*5.2 That the above grounds without prejudice to each other.*

*5.3. The Appellant craves leave to add, amend, alter and/or delete any/all of the above grounds of appeal.”*

2. As per office report there is delay of 69 days in filing the appeal before the Tribunal. On behalf of assessee an application for condonation of delay has been filed on the ground that under wrong advice the assessee had filed an appeal challenging the order of learned CIT(A), NFAC, Delhi dated 02.06.2023 before the ITAT, Bangalore Bench, who vide order dated 05.07.2023 dismissed the appeal for

want of jurisdiction. The relevant contents of the application are reproduced as under:

*“8.0 Given the above, we humbly submit to your good honor that the Appellant, in bonafide belief and good faith, has filed an appeal dated 05 July 2023 (filed on 06th July 2023) before the Hon'ble Bangalore ITAT within the due date prescribed therein, as the Appellant was under the impression that the ITAT appeal shall be lodged before the jurisdictional ITAT bench. However, in wake of recent Supreme Court ruling in case of PCIT v. MSPL Ltd. [22023] 150 taxmann.com 41 (SC), we learned that the ITAT appeal lies to the jurisdiction of the appellate authority (ITAT) the assessment order passed is situated and even in the case where the jurisdiction of an assessee is transferred in exercise of power u/s. 127 of the Act, the jurisdiction of ITAT lies where the Assessing Officer has passed the order. Given this, the appeal before the Hon'ble Delhi ITAT could not be filed within the due date of 60 days from the date of receipt of the CIT(A)/NFAC order as the appeal was already filed before Hon'ble Bangalore ITAT within the due date prescribed in this regard.*

*9.0 Given the above, we humbly request your good honor to take the above information/explanation into consideration and kindly condone the delay in filing of appeal as the Appellant's act of filing the Appeal before the Hon'ble Bangalore ITAT was in good faith and bonafide belief. We sincerely regret the inconvenience caused, if any, to your good honor in this regard.”*

3. Learned CIT(DR) opposed the submissions.
4. We have heard rival contentions and perused the material available on record. Considering the fact that the assessee had filed appeal within time at ITAT Bangalore Benches and that appeal was dismissed for want of jurisdiction, the time spent by filing an appeal before the ITAT Bangalore which had no jurisdiction

deserves to be condoned in terms of Section 5 of the Limitation Act, We, therefore, condone the delay and admit the appeal for adjudication.

5. Apropos to the grounds of appeal, learned counsel for the assessee at the outset submitted that the finding recorded by the learned CIT(A) that no submission was filed is not correct and contrary to the record. Learned counsel submitted that the learned CIT(A) was not justified in applying the decision rendered in the case of CIT Vs. Multiplan 38 ITD 320. Learned counsel drew our attention to the paper book filed by the assessee to demonstrate that the submissions were filed and the assessee was not given sufficient opportunity to present its case. Learned counsel submitted that the learned CIT(A) has not considered the submissions filed by the assessee. He, therefore, prayed that the matter may be restored to the file of learned CIT(A) to decide the matter after considering the submissions filed by the assessee.

6. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below.

7. We have heard rival submissions and perused the material on record. We find force into the contention of the assessee that assessee had filed submissions before the learned CIT(A), which have not been considered and the impugned order has been passed by observing as under.

“4. The facts of the case, in brief, are that the appellant filed the Return of Income for the A.Y. 2016-17 on 28.11.2016, declaring the total income of 'Nil'. The case was selected for scrutiny under CASS. Thereafter, the case was completed by A.O. vide order dated 22.12.2018 assessing total income of appellant at Rs. 29,83,00,530/- by making disallowance of Rs. 15,62,28,928/- on account of interest expenses, addition of Rs. 8,27,33,191/- on account of provisions as claimed and addition of Rs. 5,93,38,407/- u/s 79 of the I.T. Act. Aggrieved, the appellant filed the present appeal.

5. I have considered the facts of the case, assessment order and the material available on record. In assessment order, the A.O. made the following disallowances/additions -

*Disallowance on account of interest expenses Rs.15,62,28,928/-  
Addition on account of provisions claimed Rs. 8,27,33,191/-  
Addition u/s 79 of the I.T. Act Rs.5,93,38,407/-*

*These disallowances/additions were made by the A.O. by observing that during the assessment proceedings, the assessee failed to justify these additions/disallowance and assessee furnished inaccurate particulars of income.*

6. During appellate proceedings, numerous opportunities were granted to appellant as mentioned in Para No. 02 above to furnish written submission alongwith relevant documents for justification of these additions/disallowance but appellant failed to make any written submission alongwith relevant documents.

7 Under these circumstances, I have no alternative but to dismiss the appeal following the ratio of the decision of the Hon'ble MP High Court in the case of Estate of Late Tukhoji Rao Holkar Vs. CWT reported in 233 ITR 480 and the decision of Hon'ble ITAT, Delhi Bench in the case of CIT Vs. Multiplan India Limited reported in 38 ITD 320. The law assists those that are vigilant with their rights and not those that sleep there upon. Following this principle as embodied in the well known dictum "vigilantibus non dormientibus, jura subveniunt", all the grounds raised in this appeal as reproduced in para 3 supra are dismissed.

7.1 From the above finding of the learned CIT(A) it is clear that the issues were not adjudicated on merit. However, looking to the submissions of the assessee, the

assessee had filed written submissions before the learned CIT(A), which he ought to have adverted and decided the grounds after considering the same. We, therefore, set aside the impugned order and restore the grounds before the learned CIT(A) for decision on merits, in accordance with law, after affording adequate opportunity of being heard to the assessee. We order accordingly.

8. Consequently, assessee's appeal stands allowed for statistical purposes.

Order pronounced in open court on 25<sup>th</sup> January, 2024.

**Sd/-**  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**  
**\*MP\***

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**