

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.276 & 277/SRT/2024
Assessment Years: (2011-12 & 2012-13)
(Hybrid Hearing)

Rohini Enterprises (P) Ltd. C/o Kamal Agrawal, B-14, Jayanti Nagar, B/h Dena Bank, Udhna, Surat-394210	Vs.	Income Tax Officer, Ward- 2(1)(1), Surat, Aaykar Bhawan, Majura Gate, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAMCS 3979 D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Kiran K. Shah, CA
राजस्व की ओर से /Respondent by	Shri Ritesh Misra, CIT-DR & Shri J.K. Chandnani, Sr. DR
अपील पंजीकरण/Appeal instituted on	14.03.2024
सुनवाई की तारीख/Date of Hearing	14.05.2024
उद्घोषणा की तारीख/Date of Pronouncement	17.05.2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the assessee emanate from the separate orders passed under Section 250 of the Income-tax Act, 1961 (in short, 'the Act') both dated 30.01.2024 by the learned Commissioner of Income Tax (Appeals), [in short, 'Ld. CIT(A)'], National Faceless Appeal Centre (in short 'NFAC'), Delhi for the Assessment Years (AYs) 2011-12 and 2012-13 respectively. In both appeals, the facts are common and grounds of appeals raised by the assessee are identical. Hence, with the consent of the parties, both appeals are clubbed and heard together and are decided by the consolidated order for sake of

convenience and brevity. Grounds of appeals raised by the assessee in ITA No.276/SRT/2024 for AY.2011-12, treated as “**lead**” case, are as under:

“1) The learned CIT(A) grossly erred in dismissing the appeal by invoking section 249(4)(b) of the Act though the said company was not liable for advance tax due to loss incurred during the year under consideration.

2) The appellant reserves right to add, alter and withdraw of any grounds of appeal.”

2. The facts of the case in brief are that the assessee has not filed return of income for the AY.2011-12. The assessee has made cash deposit exceeding Rs.10,00,000/- in Bank during F.Y 2010-11 relevant to A.Y 2011-12. The Assessing Officer issued a notice to the assessee u/s 148 of the Act on 26.03.2014 but the assessee did not file any return. The Assessing Officer further issued notice u/s 142(1) of the Act. Therefore, assessee filed a letter dated 24.06.2014, *wherein* it was stated that assessee-company went into losses and was declared NPA as per bank and several legal departments proceedings which took place that year. Hence, assessee was not able to prepare the ROI. The assessee did not file ROI though submitted computation of income and copy of profit & loss account and balance-sheet for FY 2010-11. It is noticed that assessee has shown business loss of Rs.88,86,904/- and depreciation loss of Rs.2,11,803/- and has shown total income of Rs.Nil after allowing loss and depreciation. The AO found that assessee has shown total sales of finished cloth and DEPB sales of Rs.37,62,73,815/- out of which it has claimed purchases and various indirect expenses and shown gross loss of

Rs.1,39,23,639/-. As sales was more than Rs.1.00 crore, the assessee was required to get its books of accounts audited u/s 44AB of the Act. The AO rejected the books of account u/s 145(3) of the Act and added @ 5% of total sales of Rs.37,62,73,815/- i.e., Rs.1,88,13,690/- to total income of assessee. He also added u/s 68 of the Act and Rs.10,62,786/- u/s 69A of the Act. Accordingly, total income was determined at Rs.3,87,36,480/- .

3. Aggrieved by the order of AO, appellant was filed appeal before Ld.CIT(A). In the present case, assessment was completed u/s 143(3) r.w.s.147 of the Act creating demand of Rs.2,47,05,200/-. Notice was issued u/s 156 of the Act and assessee was asked to deposit the demand but assessee failed to do so. The assessee has at Sl.No.16 of Form-35 stated to have made payment of appeal fee of Rs.1,000/- and Sl.No.9 of Form-35, appellant has offered 'not applicable' comments As per provisions of Section 249(4)(b) of the Act where no return has been filed by the assessee, the assessee has to pay an amount equal to the amount of advance tax which was payable by assessee, otherwise appeal shall not be admitted. Therefore, Ld.CIT(A) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee has filed present appeal before the Tribunal.

4. The Ld. AR for the assessee has strongly argued that where no return has been filed by the assessee, then one needs to verify whether the assessee-company had paid advance tax as per the provisions of the Act. In the present case, the assessee-company had not paid advance tax as there was loss for

Rs.87,64,489/- as per the books of account. The Ld.AR submitted that if there is loss during the year, question of payment of advance tax does not arise and provisions of Section 249(4)(b) are not applicable. In view of the above, the Ld. AR submits that the appeal may be set aside directing the Ld.CIT(A) not to invoke Section 249(4)(b) of the Act and decide the case on merit.

5. In reply, Ld.Sr-DR for the Revenue has strongly relied on the orders of authorities below. He submitted that the explanation given by the assessee cannot be accepted.

6. We have heard both the parties and perused the materials available on record. Since the assessee has not filed ROI as well as not paid an amount equal to the advance tax which was payable by it, the appeal was not admitted by the Ld.CIT(A). It may be stated that if tax is being paid for same financial year based on estimated income, it would be advance tax. If tax is being paid after end of financial year, it would be self-assessment tax. When Department finds that there has been under-assessment of income and resultant tax is due, it computes the actual amount that ought to have been paid. This demand raised on the person is called tax on “regular assessment”. Tax on “regular assessment” is the tax which the taxpayer is required to pay against of notice of demand from the Income-tax Department, normally u/s 156 of the Act. The Ld.CIT(A) dismissed appeal of assessee as non-maintainable because the assessee had not paid an amount equal to the advance tax, which was payable by it. The Ld.AR has contended that the assessee-company did not pay any

advance tax as there was loss of Rs.87,64,489/- as per its books of account. When there is a loss during the year, question of payment of advance tax does not arise and provisions of Section 249(4)(b) of the Act are not applicable. We find that similar issue had come up for consideration before this Bench in ITA No.646/SRT/2023 in the case of Ranajitbhai B Patel vs. ITO dated 28.11.2023, where following the decision of co-ordinate Benches of Pune in the case of Hotel Sai Siddi (P.) Ltd. vs. DCIT (2011) 13 taxmann.com 155 (Pune), it was held that when the assessee had incurred loss while filing ROI and was not liable to pay tax an amount equal to amount of advance tax as required u/s 249(4)(b), the assessee's appeal was liable to be admitted. Following the ratio of the decision cited above and keeping in view that assessee was claiming that it had no taxable income, the Tribunal restored the case back to the file of Ld.CIT(A) with a direction to admit the appeal of the assessee and pass an order on merit. Facts of the present case of the assessee are similar to the fact of the case cited above. In this case, assessee has shown loss of Rs.87,64,489/-. Therefore, it was not liable to pay any advance tax because the estimated income was negative. The demand u/s 156 of the Act was for regular assessment tax. Therefore, following the above decision, we deem it proper to restore the case to the file of Ld.CIT(A) with a direction to admit the appeal of assessee and pass order in accordance with law. Needless to direct that before passing the order afresh, Ld.CIT(A) shall grant opportunity of being heard to assessee. The assessee is also directed to comply with the notice issued by the

Ld.CIT(A) and not to seek any adjournment without valid reason. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Coming to ITA No.277/SRT/2024 (AY. 12-13)

8. As recorded above, the assessee in this appeal has raised similar grounds of appeal as raised in the appeal for AY 2011-12, which we have remitted back to the file of Ld.CIT(A) with the direction to admit the appeal of assessee. Thus, following the principle of consistency assessee's appeal is also restored to the file of the Ld.CIT(A) with similar observation as in assessee's appeal ITA No.276/SRT/2024 for assessment year 2011-12. Hence, this appeal of assessee is also treated as allowed for statistical purposes.

9. In combined result, both appeals of assessee are treated as allowed for statistical purposes. Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 17/05/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

सुरत / Surat
दिनांक/ Date: 17/05/2024
Dkp Outsourcing Sr.PS

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat