

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA**  
[Before Shri A. T. Varkey, JM & Shri Manish Borad, AM ]**I.T.A. Nos. 207 & 208/Kol/2021**  
Assessment Years:2018-19 & 2019-20

Haldia Petrochemicals Ltd. (PAN: AAGCB2001F)	Vs.	Assistant Commissioner of Income-tax, Central Circle-2(3), Kolkata
Appellant		Respondent

Date of Hearing	21.02.2022
Date of Pronouncement	02.03.2022
For the Appellant	N o n e
For the Respondent	Shri Biswanath Das, Addl. CIT

**ORDER****Per Bench:**

Both these appeals have been preferred by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC) dated 01.04.2021 for AYs 2018-19 and 2019-20.

2. First we will deal with ITA No. 207/Kol/2021. As per the impugned order the Ld. CIT(A) has dismissed the appeal of the assessee taking note that the assessee had preferred an appeal u/s. 250 of the Income tax Act, 1961 (hereinafter referred to as the “Act”) against the intimation order passed by the CPC u/s. 143(1) of the Act dated 14.11.2019 and when this appeal was filed before him, the assessee’s case for this AY was selected for scrutiny assessment proceeding u/s. 143(3) of the Act and the proceedings has been initiated on the date of filing of the appeal [u/s. 250(1A)] of the Act. Therefore, according to the Ld. CIT(A), since the assessee’s case has been picked up for scrutiny u/s. 143(3) of the Act, the intimation order u/s. 143(1) of the Act passed by the CPC will not survive or become infructuous and dismissed the appeal. Aggrieved by the aforesaid order of the Ld. CIT(A) assessee is before us by preferring the instant appeal by stating that in this case, assessee’s total income as computed by the CPC/AO was determined to the tune of Rs.4,20,30,250/-

u/s. 143(1) of the Act, whereas the book profit u/s. 115JB of the Act was determined at Rs.97,77,69,546/-. According to the assessee, the AO/CPC has thus made an addition of Rs.4,20,30,252/- [under the normal tax] and Rs.2,64,31,080/- under the MAT. Aggrieved by the aforesaid action of the CPC the assessee preferred an appeal before the Ld. CIT(A) which was rejected on the ground that since now the assessee's case has been selected for scrutiny by the AO, the appeal preferred before him (Ld. CIT(A) against the intimation order of CPC under section 143(1) dated 14.11.2019 has become infructuous.

3. Aggrieved by the aforesaid action of Ld. CIT(A), the assessee is before us. When the appeal was taken up today, none appeared on behalf of the assessee. However, the Ld. DR Sri Biswanath Das fairly accepted that since the assessee's case has been picked up for scrutiny proceedings, the addition/disallowance made by CPC u/s. 143(1) of the Act under normal provision as well as MAT provision will become infructuous in the light of the scrutiny proceeding u/s. 143(3) of the Act. Therefore, according to him, since this is the factual position, nothing survives in this case, so, the Ld. CIT(A) rightly dismissed this appeal of the assessee because it will be a futile exercise to adjudicate. In the light of the aforesaid discussion, we agree with the action of Ld CIT(A) to dismiss the appeal because the assessee's grievance raised in the grounds of appeal against the intimation u/s. 143(1) of the Act does not survive, due to the later development wherein assessee's case has been selected for scrutiny u/s. 143(3) of the Act. Therefore, we concur with the action of the Ld. CIT(A) and dismiss the appeal of the assessee.

4. Coming to ITA No. 208/Kol/2021, the main grievance of the assessee is against the action of the Ld. CIT(A) dismissing the assessee's appeal u/s. 250 of the Act stating that the grievance for which the assessee has preferred an appeal before him can be solved by moving a Misc. Application u/s. 154 of the Act (for rectification) before the AO and citing this reason he dismissed it. We do not countenance such an action of the Ld. CIT(A). It should be borne in mind that if an assessee is aggrieved by the order of the AO/CPC, he has got the statutory right to file appeal before the Ld. CIT(A). And if the assessee prefers an appeal before the Ld. CIT(A) it does not lie in the mouth of the Ld. CIT(A) to reject it by

merely saying that assessee ought to have preferred rectification application u/s. 154 of the Act. Therefore, the impugned order of the Ld. CIT(A) is set aside and the same is restored back to the file of the Ld. CIT(A) with a direction to adjudicate the grounds of appeal in accordance to law. The assessee is at liberty to file written submission as well as document before the Ld. CIT(A) to substantiate the grounds of appeal raised by the assessee.

4. In the result, ITA No. 207/Kol/2021 is dismissed and the ITA No. 208/Kol/2021 is allowed for statistical purposes.

Order is pronounced in the open court on 2nd March, 2022.

Sd/-  
(Manish Borad)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 2nd March, 2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Halida Petrochemicals Ltd., Bengal Eco Intelligent Park, Block-EM. Plot No. 3, Sector V, Salt Lake, Kolkata-700091.
2. Respondent – ACIT, CC-2(3), Kolkata
3. CIT(A) (NFAC), Delhi.
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar