

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI B BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Aby T Varkey (Judicial Member)]**

ITA Nos.: 1013 to 1020/Mum/2022
Assessment years: 2012-13 to 2019-20

NRB Bearings Ltd., **Appellant**
*NRB Bearings Ltd., 5, Dhannur, Sir P M Road,
Fort, Mumbai 400 001 [PAN: AAACN3479P]*

Vs.

Assistant Commissioner of Income Tax, TDS
Circle 2(3) Mumbai **Respondent**

Appearances by:

Dharmesh Shah *for the appellant*

Dr. Mahesh Akhade *for the respondent*

Date of concluding the hearing : 30/06/2022
Date of pronouncing the order : 30/06/2022

O R D E R

Per Pramod Kumar VP

1. These eight appeals filed by the assessee are directed against eight separate but materially similar orders dated 23.03.2022 passed by the National Faceless Assessment Centre in the matter tax withholding liability u/s. 201 (1) r.w.s 194H of the Income Tax Act, 1961 for the assessment years 2012-13 to 2019-20.

2. One of the common grievances raised in all these appeals is that the learned National Faceless Assessment Centre erred in dismissing the appeal *ex-parte* on the ground that the appellant has not complied with the notices of hearing and, in holding so, ignored the fact that the appellant had sought adjournment against the notice dated 24.02.2021.

3. When these appeals come up for hearing, Shri Dharmesh Shah learned counsel for the assessee pointed out that as noted in paragraph 5.1 of the impugned order there has been no compliance in the notices issued by the learned National Faceless Assessment Centre but then

this observation is actually incorrect inasmuch as the assessee had in fact sought adjournment in response to the notice dated 24.02.2022 issued by the learned National Faceless Assessment Centre. It is submitted that apparently assessee's request for adjournment was overlooked. Learned counsel nevertheless hastened to add that the issue in the appeal is a short point of tax deduction liability u/s 194H and that it may be disposed of on merits. Learned counsel further pointed out that the tax deduction liability proceeds on the assumption that the relationship between the assessee and the persons to whom it had sold the product is of the principal and agent but then the actual position is that the transactions in question have taken place on a principal-to-principal basis. Learned counsel further submitted that there is no reason whatsoever given by any of the authorities below to reject the assessee's plea that the transactions in question are on a principal-to-principal basis and as such tax withholding requirements u/s 194H do not come into play and attempt was thus made to persuade us to take the matter for adjudication on merits. Learned Departmental Representative Dr. Mahesh Akhade, on the other hand submitted that the assessee was given several opportunities for making his submissions before the learned first appellate authority. He further submitted that no submissions have been made at all on the points with respect to the relationship between the assessee and persons to whom the products are sold, before the learned first appellate authority, and it would therefore not be proper to deal with these factual aspects at this stage. He however fairly submitted that there is no objection to the matter being remitted to the file of the learned first appellate authority for adjudication on merits.

4. Having heard the rival contentions and having perused the material on record we are of the considered view that in the interest of justice one more opportunity may be given to the assessee to present this case before the first appellate authority, as the first appellate authority has proceeded to dispose of the appeal without taking note of the adjournment request made by the assessee on the last day of the hearing. We may add that there is a foundational issue with respect to the assessee's relationship with the persons to whom the goods are sold, i.e. whether it is on a principal to principal basis or otherwise, but there is no clear finding, well supported by specific reasons, on this aspect of the matter one way or the other in any of the orders of the authorities below. We, therefore, deem it fit and proper to direct the assessee to make comprehensive submissions, *inter alia* on this aspect, before the first appellate authority and direct the first appellate authority to adjudicate on the matter afresh on this point as well. The matter is thus restored to the file of the first appellate authority for adjudication *de novo*, *inter alia* in the light of the above observations, after giving one more opportunity of hearing to the assessee, by way of speaking order and in accordance with the law, and as expeditiously as possible. With these directions, the matter stands restored to the file of the first appellate authority.

5. In the result the appeals are allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 30th day of June, 2022.

Sd/-
Aby T Varkey
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 30th day of June, 2022

Copies to: (1) *The appellant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

*Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*