

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 279/Ahd/2021
Assessment Year 2019-20**

Nisarg Enterprise Pvt. Ltd., 3601/3602, Phase-IV, GIDC, Trikampura, Mehmdabad Highway Road, Ahmedabad-382445 PAN: AAACN8527E (Appellant)	Vs	The ACIT, Circle-3(1)(1), Ahmedabad (Respondent)
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**Assessee by: Shri Hemanshu Shah, A.R.
Revenue by: Shri Atul Pandey, Sr. D.R.**

Date of hearing : 01-11-2022
Date of pronouncement : 04-11-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2021-22/1035915013(1) vide order dated 27/09/2021 passed for the assessment year 2019-20.

2. The assessee has taken the following grounds of appeal:-

“1. In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income-tax (Appeals) has erred in points of law and facts.

2. In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing the appellant's ground in not allowing carry forward of business loss by Rs.99,504/-.

3. In law and in the facts and circumstances of the Appellant's case, the learned Commissioner of Income-tax (Appeals) has grossly erred in passing order u/s.250 of the I.T. Act on 27.09.2021 though vide notice dated 18.09.2021 hearing was fixed on 25.10.2021.

4. Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time.”

3. The brief facts of the case are that that the assessee filed return of income for assessment year 2019-20 on 23-10-2019 declaring total loss of Rs. 59,70,663/-. Intimation u/s. 143(1) of the Act was received by the assessee on 15-09-2020 assessing total loss at Rs. 58,71,159/- as against loss of Rs. 59,70,663/- claimed by the assessee in the return of income. This was

for the reason that benefit of carry forward loss of Rs. 99,504/- was not allowed to the assessee.

4. Before CIT(A), the assessee contended that the Assessing Officer has erred in facts and in law in not allowing benefit of carry forward loss of Rs. 99,504/- to the assessee. However, CIT(A) held that on perusal of intimation issued u/s. 143(1) dated 15-09-2020 shows that communication was set by CPC to the assessee pointing out certain discrepancies in the details entered in various schedules of business and profession in the e-return filed by the assessee. Accordingly, the disallowance of brought forward loss done by CPC u/s. 143(1) on this issue is in accordance with the provisions of law and after providing due opportunity to the assessee to rectify the mistake which had crept in the e-return filed by the assessee. Further, the CIT(A) also held that since the assessee had not adduced any other evidence to substantiate its claim even in the appellate proceedings, the adjustment carried out u/s. 143(1) by CPC does not warrant any interference.

5. Before us, the counsel for the assessee drew our attention to page no. 28 of the paper book and submitted that the CIT(A) issued notice dated 18-09-2021 asking the assessee to furnish ground-wise written submissions, along with documentary evidences in support of its grounds of appeal. The due date for filing such written submission granted to the assessee the aforesaid notice was “on or before 25-10-2021”. However, the ld. CIT(A) passed the order on 27-09-2021 itself though as per the aforesaid notice, the assessee could file its written submission till 25-10-2021, and therefore, the assessee was not granted adequate opportunity to file written submissions

and present its case on merit. Therefore, the counsel for the assessee submitted that the CIT(A) passed order ex-parte on 27-09-2021 much before the due date of filing written submission granted to the assessee (25-10-2021) and hence the assessee was not afforded opportunity to present its case on merit. In response, the Id. Departmental Representative relied upon the observations made by Ld. CIT(A) in the appellate order.

6. We have heard the rival contentions and perused the material on record. In our view, from the facts presented before us, it is evident that vide notice dated 18-09-2021 though the CIT(A) had allowed time to the assessee to file its written submission till 25-10-2021, however, the Id. CIT(A) proceeded to pass ex-parte order on 27-09-2021 itself. Therefore, on perusal of records, it is found that no opportunity was granted to the assessee to file its written submissions/present its case on merits. Accordingly, in the interest of justice, we are restoring the matter to the file of CIT(A) for hearing the case on merits, after granting due opportunity of hearing to the assessee to present any submissions/ supporting evidence in support of its claim.

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

Order pronounced in the open court on 04-11-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 04/11/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद