

**IN THE INCOME TAX APPELLATE TRIBUNAL, ‘SMC’ BENCH
MUMBAI**

BEFORE: SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.671/Mum/2023
(Assessment Years :2011-12)**

M/s Silvassa Asbestos Cement Products 301, Simran Plaza, Corner of 3 rd & 4 th Road Khar West, Mumbai.	Vs.	ACIT, Circle-18(3) Room No. 609, 6 th Floor, Earnest House, Nariman Point, Mumbai.
PAN/GIR No. AAAFS2891M		
(Appellant)	..	(Respondent)

Assessee represented by	Ms. Vinita Shah
Revenue represented by	Mr. Jogendra Singh, Sr. AR
Date of Hearing	09/05/2023
Date of Pronouncement	09/05/2023

ORDER

PER KULDIP SINGH (J.M):

The Appellant, M/s Silvassa Asbestos Cement Products (hereinafter referred to as the ‘assessee’) by filing the present appeal, sought to set aside the impugned order dated 15.02.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the ‘CIT(A)’] qua the assessment order for Assessment year 2011-12 on the ground inter-alia that:-

“1. On the facts and circumstances of the case as well as in law, the learned CIT(A) has erred in passing ex-parte order, without granting sufficient opportunity of being heard to the appellant.

2. On the facts and circumstances of the case as well as in law, the learned CIT(A) has erred in confirming the action of the learned Assessing Officer in reopening the case for reassessment, without considering the facts and circumstances of the case.

3. On the facts and circumstances of the case as well as in law, the learned CIT(A) has erred in confirmation the action of the Learned Assessing Officer in disallowing the claim of deduction u/s 80IB(10) of Rs. 9,27,001/- on the alleged plea that the assessee has violated the conditions prescribed under the Act, hence not eligible to claim deduction, without considering the facts and circumstances of the case.

4. On the facts and circumstances of the case as well as in law, the Ld. Assessing Officer has erred in not accepting the request of the appellant for deduction of an inspector to revisit the property in respect to claim of deduction us 80IB without considering the facts and circumstances of the case.

5. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

2. Briefly stated, facts necessary for consideration and adjudication of the issues at hand are: The assessee company is into to the business of construction activities in Silvassa. By filing the return of income the assessee claimed deduction to the tune of Rs. 9,27,001/- under section 80IB(10) of the Income Tax Act, 1961 (in short, “the Act”), which prima facie found not admissible, and such the case was reopened by initiating the proceedings under section 147/148 of the Act. The assessee in response to the notice issued opted to treat the original return filed as reply to the notice. The objection filed to the reopening by the assessee was disposed off. Declining the contention raised by the assessee the AO proceeded to hold that the assessee has claimed deduction under section 80IB of the Act

by floating rules and regulations and thereby disallowed the same to the tune of Rs. 9,27,001/-.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the disallowance by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A), assessee has come up before the Tribunal by way of filing the present appeal.

4. I have heard the Ld. Authorised representative of the parties to the appeal, perused the order passed Ld. Lower Revenue Authorities and material available on record in the light of the case law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench by the Ld. AR for the assessee that no opportunity of being heard has been given to the assessee and the appeal has been dismissed ex-parte for want of non-prosecution.

6. On perusal of the impugned order passed by Ld. CIT(A) particularly para-2 of the impugned order wherein it is recorded that 4 notices were given to the assessee but not complied with. The Ld. CIT(A) has not recorded any satisfaction if the notices were ever served upon the assessee. On the other hand, the Ld. AR for the assessee contended that no notices have been served upon the assessee.

7. We are of the considered view that the assessee has not been provided with adequate opportunity of being heard. As the first 3 dates of

notices allegedly sent to the assessee fell during the period of pandemic, and only one opportunity appear to have been given. In order to impart the justice adequate opportunity of being heard to the assessee, hence the impugned order passed by the Id. CIT(A) is hereby set aside to decide the appeal in question afresh after providing adequate opportunity of being heard to the assessee by the Id. CIT(A).

8. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09/05/2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai; Dated 09/05/2023
Santosh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Sr. Private Secretary /
Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS

3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		