

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 952 & 953/MUM/2023  
(A.Ys. 2011-12 & 2012-13)**

Ross Murarka (India) Ltd., 25/A, Kalyandas Udhyog Bhavan Behind Century Bhavan Worli, Mumbai - 400025  <b>PAN: AAACR3039B</b>	v.	Income Tax Officer – Range – 1(3)(1) Room No. 541, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Ms. Simoni Chouhan</b>
<b>Department Represented by</b>	<b>:</b>	<b>Ms. Kavita Kaushik</b>
<b>Date of Conclusion of Hearing</b>	<b>:</b>	<b>12.06.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>21.06.2023</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 27.01.2023 for the A.Ys .2011-12 and 2012-13.

**2.** Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and

disposed off by this consolidated order. We are taking Appeal in ITA.No.952/MUM/2023 for Assessment Year 2011-12 as a lead appeal.

**ITA.NO. 952/MUM/2023 (A.Y. 2011-12)**

**3. Assessee has raised following grounds in its appeal: -**

*"1.1 The Learned Commissioner of Income-tax (Appeals), Income Tax Department ["Ld. CIT (A)"] erred in confirming the assessment order which was bad and illegal as the same was passed without granting proper, sufficient and adequate opportunity of being heard to the Appellant.*

*1.2 Without prejudice to the above, the Ld. CIT (A) erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.*

*2 On the facts and circumstances of the case as well as in Law, the Ld. CIT(A) erred in confirming the action of Income Tax Officer, Circle-1(3)(1), Mumbai (Assessing Officer) in reopening the assessment completed under Section 143(3) of the Income Tax Act, 1961 (Act) without considering the facts and circumstances of the case.*

*3. On Facts & in Law, the Ld. CIT (A), erred in confirming the action of the Assessing officer in treating the interest received on fixed deposit of Rs.9,61,058/- under the head "Income From Other Source instead of "Business Income".*

*4.1 On Facts & in Law, the Ld. CIT(A) erred in confirming the action of the Assessing Officer in disallowing business expenses and depreciation of Rs.12,06,432/- without any discussion in the matter.*

*4.2. On Facts & in Law, the Ld. CIT(A) failed to appreciate that expenses incurred were for the purpose of business and there by erred in confirming action of the Assessing Officer.*

*Without prejudice to Ground 4,*

*5. On Facts & in Law, the Learned CIT(A) erred in confirming the disallowance of deduction under Section 57 of the Act in respect of administrative expenses and depreciation.*

6. *The appellant craves leave, to add, amend, and alter all or any of the above Grounds of appeal."*

4. At the outset, Ld. Counsel for the assessee submitted that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld. Counsel for the assessee requested that the matter may be restored to the file of the Ld.CIT(A).

5. Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

6. Considered the rival submissions and material placed on record, on a perusal of the Ld.CIT(A) order, we find that even though the Ld.CIT(A) provided opportunity on several occasions assessee could not appear nor complied to the notices. Considering the totality of facts and submissions of the Ld. AR and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Needless to say that the

Ld.CIT(A) shall give adequate opportunity of being heard to the assessee.

Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

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

**ITA.No. 953/MUM/2023 (A.Y. 2012-13)**

8. Assessee has raised following grounds in its appeal: -

*"1. The Learned Commissioner of Income-tax (Appeals), Income Tax Department ("Ld. CIT (A)") erred in confirming the assessment order which was bad and illegal as the same was passed without granting proper, sufficient and adequate opportunity of being heard to the Appellant.*

*1.2 Without prejudice to the above, the Ld. CIT (A) erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.*

*2 On the facts and circumstances of the case as well as in Law, the Ld. CIT(A) erred in confirming the action of Income Tax Officer, Range-8(1)(2), Mumbai (Assessing Officer) in reopening the assessment completed under Section 143(3) of the Income Tax Act, 1961 (Act) without considering the facts and circumstances of the case.*

*3 On Facts & in Law, the Ld. CIT (A), erred in confirming the action of the Assessing officer in treating the interest received on fixed deposit of Rs.11,31,555/- under the head "Income From Other Source instead of "Business Income".*

*4.1 On Facts & in Law, the Ld. CIT(A) erred in confirming the action of the Assessing Officer in disallowing business expenses of Rs.9,22,100/-and depreciation of Rs.2,26,521/- without any discussion in the matter.*

*4.2 On Facts & in Law, the Ld. CIT(A) failed to appreciate that expenses incurred were for the purpose of business and there by erred in confirming action of the Assessing officer.*

*4.2 On Facts & in Law, the Ld. CIT(A) failed to appreciate that expenses incurred were for the purpose of business and there by erred in confirming action of the Assessing Officer.*

*Without prejudice to Ground 4,*

*5 On Facts & in Law, the Learned CIT(A) erred in confirming the disallowance of deduction under Section 57 of the Act in respect of administrative expenses and depreciation.*

*6. The appellant craves leave, to add, amend, and alter all or any of the above Grounds of appeal.*

**9.** Coming to the appeal relating to A.Y. 2012-13, since facts in these cases are mutatis mutandis, therefore the decision taken in A.Y. 2011-12 is applicable to this assessment year also. Accordingly, this appeal is allowed for statistical purpose.

**10.** To sum-up, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21<sup>st</sup> June, 2023.

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai / Dated 21.06.2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**