

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 131 & 132/SRT/2023 (AY: 2013-14)  
(Hearing in Virtual Court)

M/s Rudra Developers, Plot No. 146, 1/2/3 Baroda Prisetage, Varachha Road, Nr. Laxmi Hotel, Surat-395006 (Gujarat) <b>PAN: AANFR 4665 D</b>	Vs.	D.C.I.T., Circle-1(1)(1), Surat. (Jurisdictional A.O. & CPC Bangalore)
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Assessee by	Shri Sapnesh Sheth, CA
Department by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeals	21/02/2023
Date of hearing	27/06/2023
Date of pronouncement	27/06/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by the assessee are directed against the separate orders of learned National Faceless Appeal Centre, Delhi (NFAC)/ Commissioner of Income Tax (Appeals) [in short the Id. CIT(A)] both dated 11/01/2023 for the Assessment Year (AY) 2013-14. In ITA No. 131/Srt/2023, the assessee has assailed the validity of adjustment made by Central Processing Centre, Bangalore (C.P.C.) under Section 143(3)(1) of the Income Tax Act, 1961 (in short, the Act) and in ITA No. 132/Srt/2023, the assessee has assailed the order under Section 154 passed by the C.P.C. dated 11/10/2014.

2. The facts in both the appeals are common, issues in both the appeals are interconnected which relates to adjustment/disallowance of expenses of Rs. 1.82 crore, thus, both the appeal were clubbed heard together and are decided by common order to avoid the conflicting decisions. For appreciation of facts, facts of ITA No. 131/Srt/2023 is treated as lead case. In this appeal, the assessee has raised following grounds of appeal:-

- “1. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A),NFAC has passed order against the principle of natural justice, equality and fair by not providing reasonable opportunity of being heard despite the fact that assessee requested for adjournment.
2. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A),NFAC has erred in confirming the action of assessing officer in making disallowance of expense amounting to Rs. 1,82,32,230/-.
3. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A),NFAC has erred in confirming the action of assessing officer by not allowing carrying forward of current year business loss of Rs. 17,59,470/- claimed in the return of income.
4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. Brief facts of the case are that the assessee is engaged in building construction activities, filed its return of income for A.Y. 2013-14 declaring loss of Rs. 17,59,470/-. The return was processed by the Central Processing Centre (C.P.C.), Bangalore under Section 143(1) of the Act vide intimation dated 30/07/2014. The C.P.C. in its intimation disallowed the business expenses of Rs. 1.82 crore and thereby assessed/computed income at Rs. 1.64 crore. The assessee filed appeal against such adjustment before the Id. CIT(A). In alternative, the assessee also filed

application under Section 154 of the Act before CPC on 19/02/2019, 11/08/2019 and 30/05/2020. However, the adjustment made initially was sustained which is the subject matter of appeal in ITA No. 132/Srt/2023.

4. Before the Id. CIT(A), the assessee filed statement of fact, inter alia, stating that there is arithmetical mistake, the C.P.C. has disallowed the part of his business expenditure without giving opportunity to the assessee, though the assessee has already filed application for rectification but the same has not been rectified. In the meantime, the assessee is advised to file appeal against original/initial assessment order dated 30/07/2014. The assessee file appeal belatedly and also prayed for condonation of delay.
5. The Id. CIT(A) after considering the statement of fact, and considering the prayed for condonation of delay, condoned the delay in filing appeal. However, on merit, the Id. CIT(A) dismissed the appeal by taking a view that despite issuing notice dated 13/01/2021, 19/08/2022 and 10/11/2022, the assessee has not furnished required details and submission. The appeal of assessee was dismissed in limine without considering the basic fact. The Id. CIT(A) though recorded that the C.P.C. has rightly adjust income of Rs. 1.64 crore. Further aggrieved, the assessee has filed present appeal before the Tribunal.
6. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative

(Id. Sr. DR) for the revenue and perused the record carefully. The Id. AR of the assessee submits that the C.P.C. made adjustment without giving opportunity. Even the Id CIT(A) dismissed the appeal of the assessee without giving fair and reasonable opportunity. The assessee sought adjournment vide application dated 13.09.2022 up to 26<sup>th</sup> September 2022, however, neither the assessee was informed about the next date not about the rejection of adjournment prayer. The Id AR for the assessee filed the copy of screen shot of ITBA portal of adjournment application. Thus, no fair and proper opportunity was given to the assessee.

7. The Id AR for the assessee submits that if any adjustment/disallowance was to be made it has to be made only after selecting the return of income for complete scrutiny. The Id. AR of the assessee invited our attention on order of CPC wherein it is shown income of assessee from business or profession at Rs."0", though the C.P.C. computed income under Section 143(1) at Rs. 1.64 crore. The Id. AR of the assessee submits that he has filed copy of income tax return wherein the assessee has shown expenses of Rs. 1.82 crore. As per column 38 (iii) and has shown Work In progress of Rs. 3.19 crores as shown in column No. 3 on page No. 2 of Tax Audit report. Since the assessee has shown the loss of Rs. 17,59,470/-, the C.P.C. deducted the loss from total expenses and thereby made adjustment of Rs. 1.64 crore (1.82 crore – 17.59 lacs). The Id. AR of the

assessee submits that the relief claimed by the assessee can be adjudicated by the Tribunal as all the facts are available on record.

8. In alternative submissions, the Id A for the assessee submits that this case relates to A.Y. 2013-14, instead of restoring the matter back to the file of Id CIT(A), it may be restored to the file of Assessing Officer.
9. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities.
10. We have considered the submissions of both the parties and have gone through the orders of lower authorities. There is no dispute that the assessee was filing return of income declared NIL income. The assessee claimed loss of Rs. 17.59 lacs. The assessee has shown Work In Progress of Rs. 3.19 crores. The C.P.C. while processing the return of income, disallowed the entire expenses debited by assessee after deducting loss. On appeal before the Id. CIT(A), the appeal of assessee was dismissed in limine by holding that the assessee has not given any submission. Before us, the Id. AR of the assessee vehemently submitted that the assessee obtained adjournment vide application dated 13/09/2022. No further date was intimated at the window of ITBA Portal was closed/enabled on 10/11/2022. The Id. AR also submitted that the assessee was not given fair and reasonable opportunity. We find that the Id. CIT(A) has not considered the basic fact while adjudicating the various grounds of appeal and the order of Id. CIT(A) is not in accordance with mandate of Section

250(6) of the Act. We further find that the order of Id. CIT(A) is silent about fixing the date of hearing on various notices. Though, there is reference in para 5 of impugned order about notice dated 13/01/2021, 29/08/2022 and 10/11/2022 but the date of compliance is not recorded therein. We find merit in the submission of Id. AR of assessee that the assessee sought adjournment on 13/09/2022 up to 26/09/2022, however, the Id CIT(A) dismissed the appeal in limine by taking view that the assessee has not filed its submissions. Considering the aforesaid facts and circumstances of the case, and keeping in view that the adjustment was made by CPC mechanically, thus, we deem it appropriate to restore the issue back to the file of Assessing Officer to pass the order afresh. Needless to direct that before passing the order, the Assessing Officer shall grant fair and reasonable opportunity to the assessee. The assessee is also directed to provide complete details and its submission without any further delay. We further find that the case relates to A.Y. 2013-14, therefore, the Assessing Officer is expected to pass order afresh as early as possible. The assessee may be allowed physical hearing if so desired. In the result, the ground of appeal raised by the assessee is allowed for statistical purposes.

11. In the result, this appeal of assessee is allowed for statistical.

12. Now we take ITA No. 132/Srt/2023 for A.Y. 2013-14. In this appeal, the assessee has challenged the order under Section 154 passed by the C.P.C.

dated 11/10/2014. Considering the fact that we have restored the issue back to the file of Assessing officer. The grounds of appeal raised in this appeal is common, therefore, this appeal does not require specific adjudication. In the result, this appeal is also dismissed.

13. In the result, this appeal of assessee is also dismissed.

Order pronounced on 27/06/2023 in open court.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

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

Surat, Dated: 27/06/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT
4. DR
5. Guard File

By Order

Sr. Private Secretary, ITAT Surat