

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.705/PUN/2023

निर्धारण वर्ष / Assessment Year : 2015-16

Ashruly Engineering Pvt. Ltd., House No.599, Plot No.802, Panchnath Chowk, Kokane Nagar, Pune 411 017, Maharashtra PAN : AAGCA3219A	Vs.	DCIT, Circle-8, Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.465/PUN/2023

निर्धारण वर्ष / Assessment Year : 2015-16

ITO, Ward-8(1), Pune	Vs.	Ashruly Engineering Pvt. Ltd., House No.599, Plot No.802, Panchnath Chowk, Kokane Nagar, Pune 411 017, Maharashtra PAN : AAGCA3219A
Appellant		Respondent

Assessee by  
Revenue by

Shri M.K. Kulkarni  
Shri Ramnath P. Murkude

Date of hearing

07-09-2023

Date of pronouncement

11-09-2023

आदेश / ORDER

PER BENCH :

These two are cross appeals arise out of the order dated 21-02-2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi in relation to the assessment year 2015-16.

2. The assessee's appeal is time barred by about 48 days. The assessee has filed an affidavit stating the reasons which led to the

late filing. We are satisfied with the same. Therefore, the delay is condoned and the instant appeal is admitted for disposal on merits.

3. Briefly stated, the facts of the case are that the assessee filed its return declaring total loss of Rs.2,66,18,369/-. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had accepted unsecured loan of Rs.1,56,51,399/- from its Director, namely, Mr. Nandkumar Z. Gaikwad who had not filed his return of income. Further, the AO observed that net profit ratio of the assessee declined from loss of -3.23% to -25.70% from the preceding year. In the absence of the assessee participating in the assessment proceedings, the AO framed the assessment u/s.143(3) r.w.s.144 of the Act disallowing the claim of loss at Rs.2.66 crore and made an addition of Rs.1.56 crore. The Id. CIT(A) accepted the assessee's claim regarding the loss incurred during the year but refused the assessee's claim on the genuineness of the unsecured loan. That is how, both the sides have come up in appeal before the Tribunal.

4. We have heard the rival submissions and gone through the relevant material on record. It is seen that the assessee did not participate in the assessment proceedings which led to the passing of the *ex parte* order u/s.144 of the Act. The AO, while disallowing the loss, has gone with the net profit ratio without making any

reference to the gross profit ratio of the assessee for the current year and the preceding year. The Id. CIT(A) has equally not advanced any sustainable reason to overturn the rejection of books of account, which were, in fact, not produced before the AO. Similarly, on the second issue of making addition u/s.68 of the Act, he simply relied on the fact that the director had not filed his return of income. When the assessee tried to furnish certain additional evidence before the Id. CIT(A), the same were not accepted. Thereafter, the Id. CIT(A) took cognizance of the same. This shows that right from the assessment stage, the case has not proceeded on the canons of established law. In our considered opinion, the ends of justice would meet adequately if the impugned order is set-aside and the matter is remitted to the file of AO. We order accordingly. The AO is directed to frame the assessment afresh after allowing reasonable opportunity of hearing to the assessee.

5. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 11<sup>th</sup> September, 2023.

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 11<sup>th</sup> September, 2023  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	07-09-2023	Sr.PS
2.	Draft placed before author	07-09-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

\*