

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**AND**

**Ms. PADMAVATHY. S, ACCOUNTANT MEMBER**

**ITA No.2079/Mum/2023**

**Assessment Year: 2013-14**

M/s.Eternis Fine Chemicals Ltd.,  
B 1004, Peninsula Tower,  
Peninsula Corporate Park,  
G.K.Marg, Lower Parel West,  
Mumbai-400 013.

v. The CIT(Appeals),  
NFAC,  
Mumbai.

[PAN: AAACH 3757 J]

(Appellant)

(Respondent)

Appellant by	:	Shri Hitesh Jain, Ld.AR
Respondent by	:	Shri P.D.Chougule, Sr.DR
Date of Hearing	:	26.09.2023
Date of Pronouncement	:	27.09.2023

**ORDER**

**PER KULDIP SINGH, JM:**

The appellant, M/s.Eternis Fine Chemicals Ltd., (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 24.04.2023 passed by National Faceless Appeal Centre (NFAC) [Commissioner of Income Tax (Appeals), Delhi], *qua* the assessment year 2013-14 on the ground, *inter alia* that -

*1. The National Faceless Appeal Centre Commissioner of Income-tax (Appeals) [CIT(A)] has erred in dismissing the appeal without providing due opportunity of being heard and also not deciding on merit of the case. On the facts and circumstances of the case and in law, order passed by the CIT(A) is unjustified, illegal, against the provision of the Act and against the principles of natural justice.*

**The below grounds are without prejudice to ground no 1;**

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2. *The learned CIT(A) has erred in confirming the action of Ld. AO of disallowing Rs. 18,85,296/- under section 40(a)(i) of the Act. On the facts and circumstances of the case and in law, the disallowance made under section 40(a)(i) ought to be deleted.*

3. *The learned CIT(A) has erred in confirming the action of Ld. AO of not allowing the weighted deduction of Rs.33,75,754/- (Addition of Rs. 3,20,69,123/- rectified by AO u/s 154 subsequently) u/s.35(2AB) of the Act. On the facts and circumstances of the case and in law, the weighted deduction of Rs.33,75,754/- claimed under section 35(2AB) of the Act ought to be allowed.*

4. *The learned CIT(A) has erred in confirming the action of Ld. AO by making disallowance of Rs.2,05,853/- u/s 14A of Act. On the facts and circumstances of the case and in law, addition made under section 14A of the Act ought to be deleted.*

5. *The learned CIT(A) has erred in confirming the action of Ld. AO by not allowing the claim for additional depreciation u/s32(l)(iia). Of the Act amounting to Rs.42,30,341/- being the 10% additional depreciation on the assets purchased and put to use for less than 180 days in AY 2012-13 which were eligible for additional depreciation. On the facts and circumstances of the case and in law, the appellant ought to have been allowed additional depreciation amounting to Rs. 42,30,341/- and addition made by the Ld. AO ought to be deleted.*

6. *The appellant craves leave to add, alter, amend and/or rescind any grounds of appeal during the course of the hearing.*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the assessee is into manufacturing industry. During the scrutiny proceedings, the AO noticed from Form No.15 CA/CB that the assessee has made certain payments in foreign currency to the tune of Rs.18,85,296/- on account of professional charges without deducting TDS u/s.195 of the Act. Declining the contention raised by the assessee, the AO proceeded to make disallowance of Rs.18,85,296/- u/s.40(a)(i) of the Act, and made addition to thereof. The AO also denied the weighted deduction to the tune of Rs.3,54,44,877/- u/s.35(2AB) of the Act, on the ground that the assessee is not entitled for the weighted deduction. The AO also made disallowance of Rs.2,05,853/- u/s.14A of the Act, by invoking the provisions contained u/r.8D(2) of the IT Rules, 1962, and thereby, framed the assessment u/s.143(3) of the Act.

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3. Assessee carried the matter before the Id.CIT(A) who has confirmed the addition by dismissing the appeal for want of prosecution. Feeling aggrieved by the impugned order passed by the Id.CIT(A), assessee has come up before the Tribunal by way of filing the present appeal

4. We have heard the Ld. Authorized Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset, Ld.AR for the assessee contended that the impugned order passed by the Id.CIT(A) is *ex parte* due to non-prosecution by the assessee, for which, assessee has not received any notice. we have perused the impugned order passed by the Id.CIT(A), wherein, it is recorded in Para No.4 that the notice was issued to the assessee on 30.12.2020, 10.08.2022 and 18.01.2023, but assessee has not filed any written submissions nor filed any application seeking adjournment and consequently, he has proceeded to dismiss the appeal for want of prosecution by the assessee.

6. No doubt, the Id.CIT(A) recorded that in Para No.4 that notices were issued to the assessee in faceless proceedings, but assessee at the same time stated that he has not received any notice. We are alive to the fact that in the faceless proceedings due to certain initial glitches noticed sometimes are not served upon the assessee or they are not being noticed by the assessee and resultantly, the assessee remain unrepresented in its own appeal.

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7. For argument sake even if it is assumed that the assessee was served upon in the appeal, the Id.CIT(A) was required to dispose of the appeal on merits and not to dismiss for want of prosecution as has been held by the Hon'ble Bombay High Court in the case of CIT (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) reported in 297 CTR 614 (Bombay) by returning the following findings:

*From reading of sections 250 and 251, it is very clear that once an appeal is preferred before the Commissioner (Appeals), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in section 250(4). Further, section 250(6) obliges the Commissioner (Appeals) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251 (1 )(a) and (b) provides that while disposing of appeal the Commissioner (Appeals) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of section 251 also makes it clear that while considering the appeal, the Commissioner (Appeals) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue "is not raised by the appellant in its appeal before the Commissioner (Appeals). Thus, once an assessee files an appeal under section 246A, it is not open to him as of right to withdraw or not press the appeal. In fact, the Commissioner (Appeals) is obliged to dispose of the appeal on merits. In fact, with effect from 1-6-2001 the power of the Commissioner (Appeals) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the power of the Commissioner (Appeals) is co-terminus with that of the Assessing Officer, i.e., he can do all that Assessing Officer could do. Therefore, just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the Commissioner (Appeals) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from section 251(1)(a) and (b) and Explanation to section 251(2) which requires the Commissioner (Appeals) to apply his mind to all the issues which arise from the impugned order before him whether or not the same had been raised by the appellant before him. Accordingly, the law does not empower the Commissioner (Appeals) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. [Para 8]*

8. In view of what has been discussed above, the impugned order passed by the Id.CIT(A) is not sustainable in the eyes of law and hence, set aside and remanded back to him to decide afresh after providing opportunity of being heard to the assessee. The assessee has ensured that he would put appearance on each and every date of hearing before the Id.CIT(A).

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

Order pronounced on the 27<sup>th</sup> day of September, 2023, in Mumbai.

Sd/-  
**(PADMAVATHY. S)**  
**ACCOUNTANT MEMBER**

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

Mumbai,  
Dated: 27<sup>th</sup> September, 2023.  
*TLN, Sr.PS (on Tour)*

**Copy to:**

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

*// True Copy //*

*By Order*

*Dy./Asst. Registrar, ITAT, Mumbai*